No. [illegible]

Supreme Court
FILED
MAY [illegible]
JOHN T. FEY, Clerk

Court of Appeals

State of New York

64TH ST. RESIDENCES, INC. and 89 AMSTERDAM AVENUE CORPORATION, suing under Section 51, General Municipal Law, and ROSE K. HARRIS, EDYTHE R. SHERRICK, and RENEE BOURET, suing on behalf of themselves and all others similarly situated, and UNITED BALL BEARING CO., INC. and SEYMOUR DAMBROT and PHILIP DERMAN, as co-partners doing business in the name and style of DAMBROT & DERMAN, suing on behalf of themselves and all others similarly situated,

Plaintiffs-Appellants,

against

CITY OF NEW YORK; ROBERT F. WAGNER as Mayor of the City of New York and a member of the Board of Estimate; LAWRENCE E. GEROSA as Comptroller of the City of New York and a member of the Board of Estimate; ABE STARK as President of the City Council of the City of New York and a member of the Board of Estimate; HULAN E. JACK as President of the Borough of Manhattan, City of New York, and a member of the Board of Estimate; JAMES J. LYONS as President of the Borough of Bronx, City of New York, and a member of the Board of Estimate; JOHN CASHMORE as President of the Borough of Brooklyn, City of New York, and a member of the Board of Estimate; JAMES A. LUNDY as President of the Borough of Queens, City of New York, and a member of the Board of Estimate; ALBERT V. MANISCALCO as President of the Borough of Richmond, City of New York, and a member of the Board of Estimate; ROBERT MOSES as Chairman of the Committee on Slum Clearance of the City of New York,

Defendants-Respondents,

FORDHAM UNIVERSITY, LINCOLN CENTER FOR THE PERFORMING ARTS, INC., and WEBB & KNAPP LINCOLN SQUARE CORPORATION,

Defendants-Intervenors-Respondents.

RECORD ON APPEAL

HARRIS L. PRESENT, Esq.,
Attorney for Plaintiffs-Appellants,
1270 Sixth Avenue,
New York, New York.

PETER CAMPBELL BROWN, Esq.,
Corporation Counsel,
Attorney for Defendants-Respondents,
City of New York, et al.,
Municipal Building,
New York 7, New York.

SAXE, BACON & O'SHEA, Esqs.,
Attorneys for Defendant-Intervenor-Respondent Fordham University,
20 Exchange Place,
New York 5, New York.

MILBANK, TWEED, HOPE & HADLEY, Esqs.,
Attorneys for Defendant-Intervenor-Respondent Lincoln Center for the Performing Arts, Inc.,
15 Broad Street,
New York 5, New York.

ROSENMAN, GOLDMARK, COLIN & KAYE, Esqs.,
Attorneys for Defendant-Intervenor-Respondent
Webb & Knapp Lincoln Square Corporation,

INDEX

	PAGE
Statement Under Rule 234	1
Notice of Appeal	3
Order Appealed From	5
Judgment Appealed From	9
Stipulation as to Exhibits	197
Opinion of McGivern, *J.*	200
Waiver of Certification	208

PLEADINGS

Complaint	10
Answer of Defendants City of New York et al.	72
Exhibit A	*
Exhibit B	*
Exhibit C	*
Exhibit D	*
Exhibit E	83
Exhibit F	90
Exhibit G	*
Exhibit H	92
Exhibit I	100
Exhibit J	101
Exhibit K	102
Answer of Defendant-Intervenor Fordham University	103
Exhibit A	*
Exhibit B	109
Exhibit C	*

* Omitted by stipulation.

PAGE

Answer of Defendant-Intervenor Lincoln Center for the Performing Arts, Inc. 116

PAPERS READ IN SUPPORT OF PLAINTIFFS' MOTIONS AND IN OPPOSITION TO DEFENDANTS' AND DEFENDANTS-INTERVENORS' MOTIONS

Plaintiff's Order to Show Cause—11/29/57.. 23

Affidavit of Sidney Dickstein—11/27/57 24

Exhibit A 37
Exhibit B 42

Plaintiffs' Cross Notice of Motion—12/10/57 145

Affidavit of Sidney Dickstein—12/12/57 147

Exhibit A 166
Exhibit B 168
Exhibit C 169
Exhibit D 170
Exhibit E 172

PAPERS READ IN SUPPORT OF DEFENDANTS' AND DEFENDANTS-INTERVENORS' MOTIONS AND IN OPPOSITION TO PLAINTIFFS' MOTIONS

Affidavit of Robert Moses—12/4/57 44

Exhibit A ..... *
Exhibit B ..... *

Notice of Motion of Defendants, City of New York, et al.—12/9/57 121

Affidavit of Robert Moses—12/9/57 123

Exhibit A 132
Exhibit B 133

* Omitted by stipulation.

PAGE

Notice of Motion of Defendant-Intervenor, Fordham University—12/10/57 134

Affidavit of Laurence J. McGinley—12/10/57 136

Affidavit of Edgar B. Young—12/12/57 143
Exhibit A ..... *

Affidavit of Leo A. Larkin—12/18/57 177

Exhibit A 185
Exhibit B 188
Exhibit C 191
Exhibit D 194

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* Omitted by stipulation.

ADDITIONAL PAPERS TO THE COURT OF APPEALS

Notice of Appeal to the Court of Appeals ... 209

Order of Affirmance 212

Judgment of Affirmance 215

Stipulation Waiving Certification of Record to Court of Appeals 220

New York Supreme Court

Appellate Division—First Department

64TH ST. RESIDENCES, INC. and 89 AMSTERDAM AVENUE CORPORATION, suing under Section 51, General Municipal Law, and ROSE K. HARRIS, EDYTHE R. SHERRICK, and RENEE BOURET, suing on behalf of themselves and all others similarly situated, and UNITED BALL BEARING CO., INC. and SEYMOUR DAMBROT and PHILIP DERMAN, as co-partners doing business in the name and style of DAMBROT & DERMAN, suing on behalf of themselves and all others similarly situated,

Plaintiffs-Appellants,

against

CITY OF NEW YORK; ROBERT F. WAGNER as Mayor of the City of New York and a member of the Board of Estimate; LAWRENCE E. GEROSA as Comptroller of the City of New York and a member of the Board of Estimate; ABE STARK as President of the City Council of the City of New York and a member of the Board of Estimate; HULAN E. JACK as President of the Borough of Manhattan, City of New York, and a member of the Board of Estimate; JAMES J. LYONS as President of the Borough of Bronx, City of New York, and a member of the Board of Estimate; JOHN CASHMORE as President of the Borough of Brooklyn, City of New York, and a member of the Board of Estimate; JAMES A. LUNDY as President of the Borough of Queens, City of New York, and a member of the Board of Estimate; ALBERT V. MANISCALCO as President of the Borough of Richmond, City of New York, and a member of the Board of Estimate; ROBERT MOSES as Chairman of the Committee on Slum Clearance of the City of New York,

Defendants-Respondents,

FORDHAM UNIVERSITY, LINCOLN CENTER FOR THE PERFORMING ARTS, INC., and WEBB & KNAPP LINCOLN SQUARE CORPORATION,

Defendants-Intervenors-Respondents.

Statement Under Rule 234

This is an appeal by the plaintiffs from the order of the Hon. Mr. Justice Owen McGivern made at Special Term, Part III of the Supreme Court, New York County, the 30th day of December, 1957 granting the motions of defendants and defendants-intervenors for summary judgment dismissing the complaint herein, dismissing the complaint and directing the entry of judgment of dismissal without costs, and further denying the plaintiffs' motion for a temporary injunction and cross-motion for summary judgment on the complaint herein.

This action was commenced by the service of the summons and complaint upon the defendants on the 2nd day of December, 1957. Issue was joined by the service of the answer of the defendants on the 9th day of December, 1957.

By separate orders, respectively dated December 9, 1957 and December 12, 1957, all parties consenting thereto, defendants-intervenors Fordham University, Lincoln Center for the Performing Arts, Inc., and Webb & Knapp Lincoln Square Corporation were permitted to intervene in the action and to serve answers to the complaint, said answers being respectively served December 9, 1957, December 12, 1957 and December 20, 1957. The answer of defendant-intervenor Webb &
5 Knapp Lincoln Square Corporation was not considered by the court on the aforementioned motions.

The plaintiffs moved, by Order to Show Cause dated November 29, 1957, for a temporary injunction restraining the defendants from acquiring the Lincoln Square area by condemnation or otherwise. The defendants by Notice of Motion dated December 9, 1957 moved pursuant to subdivision 4 of Rule 106, and Rules 112 and 113 of the Rules of Civil Practice for dismissal of the complaint, judgment on the pleadings and summary judgment. The defendant-intervenor Ford-
6 ham University, by Notice of Motion dated December 10, 1957, also moved pursuant to section 476 of the Civil Practice Act and Rules 112 and 113 of the Rules of Civil Practice, for dismissal of the complaint and summary judgment. The defendant-intervenor Lincoln Center for the Performing Arts, Inc. joined in both the foregoing motions. The plaintiffs, by Notice of Motion dated December 10, 1957, cross-moved pursuant to Rule 113 of the Rules of Civil Practice for summary judgment.

There have been no changes in parties or attorneys since the commencement of the action except for the addition of the defendant-intervenors.

Notice of Appeal to this Court was served on December 31, 1957. Judgment was entered upon the aforementioned order on January 2, 1958.

There have been no further changes in the parties or attorneys than as aforesaid.

The appeal from the Order of Mr. Justice McGivern, and the judgment entered thereon, was heard by the Appellate Division of the Supreme Court, First Department, on the 13th day of February, 1958, and by its Order, dated the 20th day of February, 1958, the said Appellate Division affirmed the decision of the lower court, without opinion.

Notice of appeal to this Court was served on February 21, 1958, and filed in the office of the Clerk of the County of New York on the same date.

7

Notice of Appeal

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

64TH ST. RESIDENCES, INC., *et al.*,

Plaintiffs,

against

8

THE CITY OF NEW YORK, *et al.*,

Defendants.

Sir:

PLEASE TAKE NOTICE that the plaintiffs hereby appeal to the Appellate Division of the Supreme Court, First Judicial Department, from an order entered in the above entitled action in the Office of the Clerk of the County of New York on the 9
30th day of December, 1957, granting the defendants' motion for summary judgment, denying plaintiffs' motion for a temporary injunction pendente lite, denying plaintiffs' motion for summary judgment for declaratory relief, and from each and every part of said order.

December 31, 1957

Yours, etc.,

HARRIS L. PRESENT, Esq.
Attorney for Plaintiffs-Appellants,
Office & P. O. Address,
1270 6th Avenue
New York, New York

To:

THE CLERK OF THE COUNTY OF
NEW YORK

11

PETER CAMPBELL BROWN, Esq.
Corporation Counsel
Attorney for Defendants-Respondents,
City of New York, et al.
Municipal Building
New York 7, New York

SAXE, BACON & O'SHEA, Esqs.
Attorneys for Defendant-Intervenor-
Respondent Fordham University
20 Exchange Place
New York 5, New York

12

MILBANK, TWEED, HOPE & HADLEY, Esqs.
Attorneys for Defendant-Intervenor-
Respondent, Lincoln Center for the
Performing Arts, Inc.
15 Broad Street
New York 5, New York

ROSENMAN, GOLDMARK, COLIN & KAYE, Esqs.
Attorneys for Defendant-Intervenor-
Respondent Webb & Knapp Lincoln
Square Corporation,
575 Madison Avenue
New York, New York

Order Appealed From

At a Special Term, Part III of the Supreme Court, State of New York, held in and for the County of New York, at the Courthouse, Foley Square, in the Borough of Manhattan, City and County of New York on the 30th day of December, 1957.

Present:

HON. OWEN MCGIVERN,
Justice.

[SAME TITLE]

Plaintiffs herein having moved for a temporary injunction restraining the defendants from acquiring the Lincoln Square area by condemnation or otherwise, from executing and carrying out the terms of a proposed sponsorship contract with defendant-intervenor, Fordham University, from further processing the project with the Federal Urban Renewal Administration and from expending or committing any city funds in connection with the project, and

Defendants herein having moved pursuant to Rule 106, subd. 4 and Rules 112 and 113 of the Rules of Civil Practice for an order and judgment (a) dismissing the complaint on the ground that it is insufficient in law and does not state facts sufficient to constitute a cause of action; (b) on the pleadings and (c) dismissing the com-

16 *Order Appealed From*

plaint and granting summary judgment in favor of the defendants and

Plaintiffs herein having cross-moved pursuant to Rule 113 of the Rules of Civil Practice for summary judgment in favor of the plaintiffs on their causes of action for declaratory judgments, and

Defendant-intervenor, Fordham University having moved for an order granting judgment on the pleadings pursuant to Section 476 of the Civil Practice Act and Rule 112 of the Rules of Civil Practice, dismissing the complaint on the ground
17 that it does not state facts sufficient to constitute a cause of action, and for an order granting summary judgment pursuant to Rule 113 of the Rules of Civil Practice, and

Defendant-intervenor Lincoln Center for the Performing Arts, Inc., having joined in the motions of the defendants to dismiss the complaint and in opposition to plaintiffs' cross-motion for summary judgment,

And said motions having regularly come on to be heard before me,

18 Now, on reading and filing the complaint herein, verified the 27th day of November, 1957, together with the exhibits annexed thereto and the answer of defendants, verified the 9th day of December, 1957, together with the exhibits annexed thereto, and the answer of defendant-intervenor Fordham University, verified the 9th day of December, 1957, together with the exhibits annexed thereto, and the answer of defendant-intervenor Lincoln Center for the Performing Arts, Inc., verified the 12th day of December, 1957, and plaintiffs' order to show cause, dated November 29, 1957, and the defendants' notice of motion dated December 9, 1957 and plaintiffs' notice of cross-motion dated

December 10, 1957 and the notice of motion of defendant-intervenor Fordham University, dated December 10, 1957, and

The affidavit of Sidney Dickstein, sworn to November 27, 1957, together with the exhibits annexed thereto, and the affidavit of Sidney Dickstein, sworn to December 12, 1957, together with the exhibits annexed thereto, submitted in support of plaintiffs' motion for a temporary injunction and cross-motion for summary judgment and in opposition to the motions of defendants and defendants-intervenors, and the affidavit of Robert Moses, sworn to the 4th day of December, 1957, together with the exhibits annexed thereto, and the affidavit of Robert Moses, sworn to the 9th day of December, 1957, together with the exhibits annexed thereto, and the affidavit of Leo A. Larkin, sworn to the 18th day of December 1957, together with the exhibits annexed thereto, and the affidavit of Laurence J. McGinley, sworn to the 10th day of December, 1957, and the affidavit of Edgar B. Young, sworn to the 12th day of December, 1957, together with the exhibit annexed thereto, in support of the motions of defendants and defendants-intervenors and in opposition to the motion and cross-motion of the plaintiffs,

And after hearing Harris L. Present, Esq., attorney for the plaintiffs in support of plaintiffs' motion for a temporary injunction and cross-motion for summary judgment and in opposition to the motions of defendants and defendants-intervenors for judgment dismissing the complaint, and Hon. Peter Campbell Brown, Corporation Counsel of the City of New York, attorney for defendants, by Anthony Curreri, Esq., of counsel, and Saxe, Bacon and O'Shea, Esqs., attorneys for defendant-intervenor Fordham Uni-

versity, by Edward D. Burns, Esq. and Porter R. Chandler, Esq., of counsel, and Sanford L. Schamus, Esq., attorney for West Side Chamber of Commerce of the City of New York, Inc., *amicus curiae,* in support of the motions of defendants and defendants-intervenors and in opposition to plaintiffs' motion and cross-motion,

And due deliberation having been had, upon filing the opinion of the Court, it is

23 ORDERED, that the motions of defendants and defendants-intervenors for summary judgment dismissing the complaint be and the same are hereby granted and it is further

ORDERED, that the complaint be and the same is hereby dismissed and the Clerk is hereby directed to enter judgment accordingly without costs, and it is further

ORDERED, that plaintiffs' motion for a temporary injunction and cross-motion for summary judgment be and the same are hereby denied.

24

Enter,

O. McG.,
J. S. C.

Filed Dec. 30, 1957

N. Y. Co. Clerk's Office

Judgment Appealed From

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

The defendants having moved pursuant to Rule 106, subd. 4, and Rules 112 and 113 of the Rules of Civil Practice for an order dismissing the complaint; and the defendant-intervenor, Fordham University, having moved pursuant to Section 476 of the Civil Practice Act and Rules 112 and 113 of the Rules of Civil Practice for an order granting judgment on the pleadings and dismissing the complaint; and the defendant-intervenor, Lincoln Center for the Performing Arts, Inc., having joined in the aforesaid motions; and an order having been duly entered in the office of the Clerk of the County of New York on or about the 30th day of December, 1957, granting the motions and dismissing the complaint, without costs,

26

27

Now, on motion of Peter Campbell Brown, Corporation Counsel, attorney for defendants; Saxe, Bacon and O'Shea, Esqs., attorneys for defendant-intervenor, Fordham University; and Milbank, Tweed, Hope and Hadley, Esqs., attorneys for defendant-intervenor, Lincoln Center for the Performing Arts, Inc.; and Rosenman, Goldmark, Colin & Kaye, attorneys for defendant-intervenor Webb & Knapp, Lincoln Square Corporation, it is

ADJUDGED that the complaint be and the same hereby is dismissed.

Dated: January 2, 1958.

HYMAN W. GAMSO,
Acting Clerk.

Filed January 2, 1958.

28

Complaint

SUPREME COURT OF THE STATE OF NEW YORK

County of New York

[Same Title]

Plaintiffs, by Harris L. Present, their attorney,
29 allege as follows:

For a First, Separate and Distinct Cause of Action on Behalf of Plaintiffs 64th St. Residences, Inc. and 89 Amsterdam Avenue Corporation, Suing Under Section 51 of the General Municipal Law

First: At all times herein mentioned plaintiffs 64th St. Residences, Inc. and 89 Amsterdam Avenue Corporation were and still are corporations incorporated under and pursuant to the laws of
30 the State of New York and have had their principal offices in the City, County and State of New York. For several years prior to the commencement of this action said plaintiffs have been and presently are the owners of and in possession of real property in said City of New York known as 146 West 64th Street and 89 Amsterdam Avenue, respectively, both in the City, County and State of New York, the record title of which at all times was and is in said plaintiffs' names. Said parcels of real property have been assessed and are now assessed in amounts in excess of $1000, and said plaintiffs have been and now are liable on such

assessments for payment of taxes to the said City of New York and have paid such taxes within one year prior to the commencement of this action. 31

Second: Upon information and belief and at all the times hereinafter mentioned, the above-named Robert F. Wagner was and still is the Mayor of the City of New York and a member of the Board of Estimate of the City of New York; the above-named Lawrence E. Gerosa was and still is the Comptroller of the City of New York and a member of the Board of Estimate; the above-named Abe Stark, Hulan E. Jack, James J. Lyons, John Cashmore, James A. Lundy and Albert V. Maniscalco were and still are members of said Board of Estimate; the above-named Robert Moses was and still is Chairman of the Committee on Slum Clearance of the City of New York; the above-named City of New York was and still is a municipal corporation existing under and subject to the Constitution and laws of the State of New York; the Board of Estimate was and still is the governing body of said City of New York. 32 33

Third: Under and pursuant to the provisions of Section 72-k of the General Municipal Law, the Board of Estimate of the City of New York is authorized to acquire, by condemnation or otherwise, any real property necessary or incidental to the clearance, replanning, reconstruction and neighborhood rehabilitation of substandard and unsanitary areas upon the prior consent of the City Planning Commission, and said Board of Estimate may apply for and accept financial assistance, loans and grants from the Federal Gov-

ernment as provided in Title I of the Federal Housing Act of 1949 as amended, 49 U. S. C. § 1451, *et seq.*

Fourth: Prior hereto and on information and belief, defendant Robert Moses as Chairman of the Committee on Slum Clearance of the City of New York requested and obtained authorization from the Board of Estimate of the City of New York to file application for an advance for funds for preparation and study of the Lincoln Square
35 Urban Renewal Project, Borough of Manhattan, City of New York, under the provisions of Title I of the Federal Housing Act of 1949 as amended, 42 U. S. C. § 1451 *et seq.* and Section 72-k of the General Municipal Law (hereinafter referred to as the "Project"); and defendant Moses thereafter requested and obtained authorization from said Board of Estimate to present and process the Project plan with the Federal Urban Renewal Administration.

Fifth: On information and belief, the Project
36 plan created pursuant to such authorization calls for the acquisition by the defendant City of New York, by condemnation or otherwise, of a thirteen square block area located in the Borough of Manhattan, City and State of New York, generally bounded on the north by West 70th Street and West 66th Street, on the south by West 66th Street and West 60th Street, on the east by Amsterdam Avenue and Columbus Avenue, on the west by the New York Central Railroad right of way and by Amsterdam Avenue (hereinafter referred to as the "Project Area"). The plan for said Project and the statutes referred to in Paragraph "Fourth" require the difference between the acquisition cost of the Project area, together with

site improvements, and the price obtained on resale of said area to be paid from a grant from the Federal Government of approximately 28 million dollars of Federal funds and a grant from the City of New York of approximately 14 million dollars of municipal funds.

Sixth: On information and belief, the Project plan includes a provision for a site of approximately 320,230 square feet, comprising the area generally bounded by Amsterdam Avenue, West 62nd Street, Columbus Avenue, and West 60th 38
Street (hereinafter referred to as the "collegiate site") for the Fordham University Downtown Center, which comprises the Schools of Law, Education, Business and Social Service; a provision for a site for a Performing Arts Center; and a provision for a housing site.

Seventh: On information and belief, the Project plan requires that prospective purchasers be designated as sponsors for each site in the Project area; that each sponsor enter into an agreement with the defendant City of New York pursuant to which it agrees to bid a minimum price at the 39
public auction of said site, and upon purchase of said site to use it for the specific purpose set forth in the Project plan, and the defendant City of New York agrees, upon approval of the Project and authorization of the Board of Estimate, to acquire said site by condemnation or otherwise, and to sell said site to the sponsor at public auction, unless a higher bid is made by another to purchase the site for the use permitted by the plan.

Eighth: On information and belief, defendant Robert Moses has announced that the agreements

described in Paragraph "Seventh" above (hereinafter referred to as "sponsorship agreements") are essential to the Project because it would not be feasible for the City of New York to acquire the Project area unless commitments to purchase said area had previously been obtained.

Ninth: On information and belief, on or about October 1955, defendant Robert Moses, as Chairman of the Committee on Slum Clearance of the City of New York, solicited bids for the sponsor-
41 ship of the Project area.

Tenth: On information and belief, that defendant Moses as Chairman of the Committee on Slum Clearance of the City of New York thereafter accepted a sponsorship bid submitted by Fordham University to purchase the collegiate site for a price of $5 per square foot and designated Fordham as sponsor for said site, and restricted said site in the Project plan for redevelopment for educational purposes; and entered into a tentative sponsorship agreement with Fordham University
42 on behalf of the City of New York.

Eleventh: Thereafter, defendants Moses and City of New York revised said tentative sponsorship agreement, by changing the minimum price Fordham University was required to bid from $5 per square foot to approximately $8 per square foot and thereafter by changing said price from $8 per square foot to $6.75 per square foot and thereafter by changing said price from $6.75 per square foot to $7 per square foot.

Twelfth: On information and belief, Fordham University is a Catholic school under the control

and direction of the Catholic Church and, while enrollment is not limited to students of the Catholic faith, a complete program of religious education and indoctrination in the Catholic faith is conducted by the said University.

Thirteenth: On information and belief, that defendant Moses as Chairman of the Committee on Slum Clearance of the City of New York has announced that the solicitation of sponsorship bids for the sites in the Project area was widely advertised. On information and belief, that no 44
educational institution other than Fordham submitted a bid for the collegiate site; that there is no institution which presently intends and has funds available to purchase 320,230 square feet in the Borough of Manhattan at a price of $7 per square foot for the use required by the Project plan; that if the collegiate site is acquired by the City of New York and sold at public auction in accordance with the plan, Fordham University is the only possible bidder and defendant City of New York will be obligated to sell the collegiate site to Fordham University pursuant to the spon- 45
sorship agreement.

Fourteenth: On information and belief, the collegiate site has a value of, and will be acquired by the City pursuant to the Project plan at a price of more than $16 per square foot.

Fifteenth: On information and belief, sale of the collegiate site to Fordham University for the price of $7 per square foot after acquisition of said site for a price of more than $16 per square foot, and construction of various site improvements such as utilities by defendant City of New

York will result in a direct subsidy to Fordham University in a sum in excess of $3,500,000; sale of the collegiate site to Fordham University at any price below the acquisition cost and the cost of site improvements by defendant City of New York will result in a direct subsidy to Fordham University; sale of the collegiate site to Fordham University by defendant City of New York at any price will result in an indirect subsidy to Fordham University in that said University will be aided by the condemnation power of defendant
47 City of New York to acquire valuable property which it could not otherwise acquire.

Sixteenth: On information and belief, that defendant Moses, as Chairman of the Committee on Slum Clearance of the City of New York, after approval of the Project plan by the Housing and Home Finance Agency of the federal government, in or about August 1957, submitted the Project plan, including the sponsorship of the collegiate site by Fordham Unversity to the City Planning Commission for its approval; that thereafter on or
48 about September 10, 1957, the City Planning Commission held public hearings on the Project plan, at which hearings members of the public objected to said Project plan on the ground that it was illegal and unauthorized in that it required the use of public money, credit and property in aid of a school under the control and direction of a religious denomination; that thereafter, on or about October 2, 1957, the City Planning Commission approved the Project plan in its entirety and as a single entity.

Seventeenth: On information and belief, on or about October 25, 1957, the defendants, members of the Board of Estimate, held public hearings on

the Project plan, at which members of the public objected to said Project plan on the ground that it was illegal and unauthorized in that it required the use of public money, credit and property in aid of a school under the control and direction of a religious denomination; that thereafter the defendants, members of the Board of Estimate, approved the Project plan as an entity and authorized the City of New York to proceed with said Project and to acquire, by condemnation or otherwise, the Project area for sale, clearance and redevelopment, in accordance with the Project plan, 50
and specifically approved the sponsorship contract with Fordham University.

Eighteenth: The actions of defendants as hereinbefore alleged are null, void, illegal and unauthorized, as they are in violation of Article XI, Section 4 of the Constitution of the State of New York and in further violation of the Fourteenth Amendment of the Constitution of the United States.

Nineteenth: The condemnation, as approved and authorized by the Board of Estimate as afore- 51
said, is the taking of private property for a non-public use and is in violation of Article I, Section 7 of the Constitution of the State of New York and in further violation of the Fourteenth Amendment of the Constitution of the United States.

Twentieth: Unless defendants are restrained and enjoined from carrying out the Project plan, the defendant City of New York will condemn or otherwise acquire the Project site, and offer said site for sale at public auction at which Fordham will acquire the collegiate site thereby causing grave, irreparable injury to the taxpayers of the

City of New York and each of them, unwarranted waste and expenditure of public funds, and an injury to public property and the taxpayers of the City of New York, for all of which they have no adequate remedy at law.

FOR A SECOND, SEPARATE AND DISTINCT CAUSE OF ACTION ON BEHALF OF PLAINTIFFS ROSE K. HARRIS, EDYTHE R. SHERRICK AND RENEE BOURET, SUING ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, AND UNITED BALL BEARING
53 CO., INC. AND SEYMOUR DAMBROT AND PHILIP DERMAN, AS CO-PARTNERS DOING BUSINESS IN THE NAME AND STYLE OF DAMBROT & DERMAN, SUING ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED.

Twenty-first: At all times herein mentioned plaintiffs Rose K. Harris, Edythe R. Sherrick and Renee Bouret were and still are citizens of the State of New York, residing at 101 West 60th Street in the Borough of Manhattan, City and State of New York. Said plaintiffs bring this
54 action on behalf of themselves and all others similarly situated.

Twenty-second: At all times herein mentioned plaintiff United Ball Bearing Co., Inc., was and still is a corporation incorporated under and pursuant to the laws of the State of New York, and has its principal offices, occupies business premises and is doing business at 49 Amsterdam Avenue, in the City, County and State of New York. At all times herein mentioned plaintiffs Seymour Dambrot and Philip Derman, doing business as co-partners in the name and style of Dambrot & Derman, occupied business premises and were

doing business at 40 Columbus Avenue, in the City, County and State of New York. Said plaintiffs have during the period of their occupancy of said business premises built up valuable good will for said businesses amongst the residents of the neighborhood and others and have made valuable installations of fixtures and equipment in the said premises. Said plaintiffs bring this action on behalf of themselves and all others similarly situated.

Twenty-third: Plaintiffs repeat, reaffirm and 56
reallege each and every allegation set forth in Paragraphs numbered "Second" through "Sixth" of this complaint as though fully set forth herein at length.

Twenty-fourth: The collegiate site includes 101 West 60th Street, Borough of Manhattan, City and State of New York, where plaintiffs Harris, Sherrick and Bouret now lawfully reside with members of their respective families.

Twenty-fifth: Plaintiffs repeat, reaffirm and reallege each and every allegation set forth 57
in Paragraphs numbered "Seventh" through "Twentieth" of this complaint as though fully set forth herein at length.

Twenty-sixth: Defendants, members of the Board of Estimate, have approved the Project plan and have authorized the acquisition by condemnation and otherwise of the collegiate site and the destruction of all residential and business structures within said site including numbers 101 West 60th Street, 49 Amsterdam Avenue and 40 Columbus Avenue, where plaintiffs lawfully reside or occupy business premises.

Twenty-seventh: Unless defendants are restrained and enjoined from acquiring by condemnation or otherwise the Project area, including the premises in which plaintiffs Harris, Sherrick and Bouret now reside, said plaintiffs will suffer grave and irreparable injury and, together with their respective families, will be forced to vacate their homes and premises, to their irremediable damage, for which they have no adequate remedy at law.

59 Twenty-eighth: Unless defendants are restrained and enjoined from acquiring by condemnation or otherwise the Project area, which includes the premises which plaintiffs United Ball Bearing Co., Inc. and Dambrot & Derman now occupy for their respective businesses, said plaintiffs will suffer grave and irreparable injury in that they will be forced to vacate said premises and to move from said neighborhood, thus losing the valuable good will of their respective businesses, the value of fixtures and installations, and will further incur substantial moving expenses,
60 to their irremediable damage, for which they have no adequate remedy at law.

WHEREFORE, plaintiffs 64th St. Residences, Inc. and 89 Amsterdam Avenue Corporation pray for judgment on the first cause of action as follows:

1. That the action of the Board of Estimate of the City of New York of November 26, 1957, approving the Project plan, the Project redevelopment contracts, the capital grant contract, acquisition of the Project area by condemnation or otherwise, and the sale of the Project area in accordance with the Project plan, be declared

null and void, illegal and unauthorized, in violation of Article XI, Section 4, and Article I, Section 7 of the Constitution of the State of New York and further in violation of the Fourteenth Amendment to the Constitution of the United States;

2. That defendants, their attorneys, agents, servants, representatives and/or employees now or hereafter connected with the subject matter of this complaint, be restrained and enjoined from (a) executing or carrying out the terms of the 62
sponsorship and redevelopment contracts with Fordham University; (b) acquiring by condemnation or otherwise the Project area; (c) further processing the Lincoln Square Urban Renewal Project with the Federal Urban Renewal Administration under Title I of the Federal Housing Act of 1949, as amended; (d) expending or continuing to expend, pledge or commit, directly or indirectly, any funds of the City of New York in connection with the Lincoln Square Urban Renewal Project.

63
Plaintiffs Rose K. Harris, Edythe R. Sherrick, Renee Bouret, United Ball Bearing Co., Inc., Seymour Dambrot and Philip Derman pray for judgment on the second cause of action as follows:

1. That the action of the Board of Estimate of the City of New York of November 26, 1957, approving the Project plan, the Project redevelopment contracts, the capital grant contract, acquisition of the Project area by condemnation or otherwise, and the sale of the Project area in accordance with the Project plan, be declared

null and void, illegal and unauthorized, in violation of Article XI, Section 4 and Article I, Section 7 of the Constitution of the State of New York and further in violation of the Fourteenth Amendment to the Constitution of the United States;

2. That defendants, their attorneys, agents, servants, representatives and/or employees now or hereafter connected with the subject matter of this complaint, be restrained and enjoined from (a) executing or carrying out the terms of the
65 sponsorship and redevelopment contract with Fordham University; (b) acquiring by condemnation or otherwise the Project area; (c) further processing the Lincoln Square Urban Renewal Project with the Federal Urban Renewal Administration under Title I of the Federal Housing Act of 1949, as amended; (d) expending or continuing to expend, pledge or commit, directly or indirectly, any funds of the City of New York in connection with the Lincoln Square Urban Renewal Project.

The plaintiffs individually and severally pray
66 for such other and further relief which to this Court seems just and proper in the premises, including the costs and disbursements of this action.

Harris L. Present,
Attorney for Plaintiffs,
Office and P. O. Address,
1270 Sixth Avenue,
New York 20, N. Y.

(Verified.)

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

Upon the summons and complaint herein, verified the 27th day of November, 1957, and the affidavit of Sidney Dickstein, verified the 27th day of November, 1957, let the defendants or their 68
attorneys show cause before this Court at a Special Term, Part III thereof, to be held in and for the County of New York in the County Courthouse in the Borough of Manhattan, City of New York, on the 5th day of December, 1957, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard why a preliminary injunction should not issue herein enjoining the defendants, pending the determination of this action, from executing or carrying out the terms of the Lincoln Square Title I Urban Redevelopment Project sponsorship contract with Fordham University; acquiring by condemnation or otherwise 69
the Project area or any part thereof; further processing the said Project with the Federal Urban Renewal Administration; and expending or continuing to expend, pledge or commit, directly or indirectly, any funds of the City of New York in connection with the said Project.

ORDERED that personal service of this order to show cause, together with a copy of the papers hereto attached, on the defendants on or before the 2nd day of December, 1957, at 4:00 o'clock in the afternoon be deemed sufficient service.

Dated: November 29, 1957.

MATTHEW M. LEVY,
Justice of the Supreme Court
of the State of New York.

70 **Affidavit of Sidney Dickstein, Read in Support of Plaintiffs' Motions and in Opposition to Defendants' and Defendants-Intervenors' Motions**

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

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71 STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

SIDNEY DICKSTEIN, being duly sworn, deposes and says:

I am an attorney associated with Harris L. Present, attorney for the plaintiffs herein, and make this affidavit in support of the plaintiffs' motion for a temporary injunction and application for a stay pending the hearing and determination of plaintiffs' motion for temporary injunction.

72 I am fully familiar with the instant proceedings as well as the facts relating thereto, such facts being principally obtainable through public records or information available to the public at large.

The plaintiff 64th St. Residences, Inc. is the owner of real property located at 146 West 64th Street in the Borough of Manhattan, City and State of New York, which property is assessed in an amount exceeding $1,000.

The plaintiff 89 Amsterdam Avenue, Inc. is the owner of real property located at 89 Amsterdam Avenue in the Borough of Manhattan, City and State of New York, which property is assessed in an amount exceeding $1,000.

73

Plaintiffs Harris, Sherrick and Bouret are residential tenants of an apartment building located at 101 West 60th Street in the Borough of Manhattan, City and State of New York.

Plaintiff United Ball Bearing Co., Inc. is a business tenant at 49 Amsterdam Avenue in the Borough of Manhattan, City and State of New York.

Plaintiffs Dambrot and Derman are business tenants at 40 Columbus Avenue in the Borough of Manhattan, City and State of New York.

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On November 26, 1957, the Board of Estimate passed a series of resolutions authorizing land acquisition, approving sponsorship contracts and authorizing the City of New York to enter into a capital grant contract with the Federal Urban Renewal Administration. Thus final action has been taken on the Lincoln Square Urban Renewal Project. A copy of the pertinent portion of the calendar of the Board of Estimate for November 26, 1957 is annexed hereto as "Exhibit A" and made a part hereof as though fully set forth herein.

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The gravamen of the complaint is based on the sponsorship by Fordham University of a portion of the redevelopment plan for Lincoln Square. Plaintiffs contend that such sponsorship gives aid, support and subsidy to a religious educational institution in violation of the First Amendment to the Constitution of the United States, as made applicable to the States by the Fourteenth Amendment, and Article 11, Section 4, of the Constitution of the State of New York. Plaintiffs further contend that they are immediately threatened with a taking of property rights without due process of law, in that such taking is not for public use in further violation of the Four-

teenth Amendment to the Constitution of the United States and Article 1, Section 7 of the Constitution of the State of New York.

Fordham University is a Catholic school sponsored, administered by, and dedicated to the Catholic Church and while enrollment is not limited to students of Catholic faith, Fordham conducts a complete program of religious education and indoctrination in the Catholic faith. The language of the prospectus of the School of
77 Education, one of the specific schools which is to occupy the site, states: "The role of the Church in education is presented in the proper light in all instruction at the undergraduate and graduate levels. The emphasis is distinctly and repeatedly Christian. The approach is partly historical but mainly philosophical. The theological implications are also given due consideration. The purpose of such emphasis is to serve the interests of the Church through providing, in its proper perspective, the energizing and stabilizing influence of Christian principles in the field of education."

78 The Lincoln Square Urban Renewal Project is being carried on pursuant to the provisions of Title I of the Federal Housing Act of 1949, as amended, 42 U. S. C. § 1450 *et seq.* and § 72-k of the General Municipal Law of the State of New York.

Title I of the National Housing Act of 1949 provides that federal funds shall be granted to local authorities for the purpose of acquiring slum areas and redeveloping such areas in accordance with a plan approved by local authorities and the Administrator of the Federal Urban Renewal Agency.

Section 72-K of the General Municipal Law permits and authorizes a municipal corporation to acquire real property for clearance and redevelopment, to provide local grants for the costs of acquisition and clearance and to apply for the Federal contributions provided by Title I of the National Housing Act of 1949, as amended.

The redevelopment plan is normally undertaken by private interests who acquire land from the local authorities at a price less than the total cost of acquisition. The loss incurred by reason of the difference between the cost of acquisition 80 and the amount obtained on resale, together with other expenses incurred in connection with the project, is borne two-thirds by the Federal Government and one-third by the local authority.

The Lincoln Square Urban Renewal Plan generally provides for the clearance and redevelopment of a thirteen-block area, comprising approximately sixty-eight acres, on the West Side of Manhattan, just above Columbus Circle. The renewal plan consists of the following major sections:

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1. A housing section on the blocks between Amsterdam Avenue and the New York Central Railroad tracks West of West End Avenue, from West 66th Street to West 70th Street.

2. A performing arts center on the blocks between Amsterdam and Columbus Avenues from West 62nd Street to West 65th Street.

3. A collegiate center on the blocks between Columbus and Amsterdam Avenues, from West 60th to West 62nd Streets.

82 *Affidavit of Sidney Dickstein*

4. An institutional area on the west side of Amsterdam Avenue between 66th Street and 67th Street.

The Lincoln Square Urban Renewal Project began its official processing on April 19, 1954 when the Committee on Slum Clearance filed a report with the Board of Estimate requesting authorization to file an application for federal funds for a study of Lincoln Square. On June 24, 1954, the Board granted such authorization. On Octo-
83 ber 27, 1954, the Committee on Slum Clearance requested the Board of Estimate to reapprove the prior grant of authority and this was done on October 29, 1954. On May 26, 1955, the Board of Estimate accepted the grant of federal planning funds. On January 17, 1956, the Committee on Slum Clearance requested the Board of Estimate to authorize an application for additional federal funds, and such authorization was granted on January 26, 1956. On or about June 7, 1956, the Committee on Slum Clearance sent preliminary plans to Mayor Wagner and requested that the
84 Mayor place on the calendar of the Board of Estimate a proposal to grant the Committee authorization to further process these plans with the Federal Urban Renewal Administration. On June 15, 1956, this proposal appeared on the Board's calendar and was referred to the City Planning Commission and the Corporation Counsel's Office for their reports. On June 29, 1956, the City Planning Commission approved these plans and recommended to the Board that the Board grant the requested authorization. On July 26, 1956, the Board held a public hearing on the requested authorization and adjourned the matter to August 30, 1956. On August 30, 1956, after

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further hearings were held, hearings were declared closed and the matter was placed on the Board's calendar for September 27, 1956. On September 27, 1956, the Board approved the request and authorized the Committee on Slum Clearance to further process the proposed plan with the Federal Urban Renewal Administration The final plan was submitted to the Federal Urban Renewal Administration, which approved the final project plan. On August 22, 1957, the Board of Estimate referred the matter to the City Planning Commission and, after public hearings, which were held on the 11th day of September, 1957, the City Planning Commission approved the project. Such approval was issued in a report dated October 2, 1957. On the 25th day of October, 1957, the Board of Estimate held public hearings on the final approval of the project and the resolution set forth as "Exhibit A" hereto. On November 21, 1957, these resolutions appeared on the calendar of the Board of Estimate but consideration of the resolutions was adjourned to November 26, 1957. On November 26, 1957, as aforesaid, the Board of Estimate took final action in approving the Lincoln Square Urban Renewal Project.

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Among the resolutions passed by the Board of Estimate on that date was a resolution approving the sponsorship contract with Fordham University for the collegiate site. The site plan submitted by the Committee on Slum Clearance to the City Planning Commission is annexed hereto and made a part hereof as "Exhibit B."

The City of New York has consistently followed certain planning procedures in connection with Title I projects. In the earliest stages of a proposed project, tentative bids to purchase the property are solicited from prospective rede-

88 velopers. The renewal or redevelopment plan is then drawn in accordance with the utilization needs of the tentative sponsors. In the earliest planning stages of the Lincoln Square Project, the Committee on Slum Clearance, following its usual procedures, made extensive inquiry as to prospective redevelopers. Upon Fordham's assurance that it could and would utilize over 300,000 square feet of the project area, the renewal plan was specifically formulated so as to
89 restrict an area of that size to re-use as a collegiate center.

The collegiate center consists of approximately 320,000 square feet of land and in accordance with the redevelopment proposal will be used by Fordham University for a Downtown Graduate Center, comprising the Schools of Law, Education, Business and Social Service.

Although Section 72-k of the General Municipal Law requires that the project site be disposed of through public auction with the property being sold to the highest bidder, the restriction on re-use of the collegiate center to redevelopment
90 by a college or university so completely narrows the field of competitive bidding that acquisition and use by Fordham is a virtual certainty.

Fordham University has now entered into a formal sponsorship agreement with the City of New York, which agreement has been approved by the Board of Estimate. The agreement provides in part that Fordham will bid a specific sum for the acquisition of the Collegiate Center. Although it is within the realm of legal possibility that another collegiate institution may appear at public auction and acquire the collegiate site by submitting a bid higher than the price agreed to between Fordham and the City of New York, the

likelihood of such an occurrence strains credulity. In every previously processed Title I project in the City of New York, the sponsor has purchased the site specified in the sponsorship contract at public auction for the amount set forth in the sponsorship contract. Moreover, on information and belief, there has never even been a bidder other than the designated sponsors. With certainty of being the ultimate purchaser, Fordham has already incurred planning expenses for building design. In addition, Fordham, together with the other sponsors of the Lincoln Square Project, 92 have since February 1, 1957 been operating a Lincoln Square Urban Renewal Project Information Center at their own expense.

Plaintiffs' objections to the Lincoln Square Urban Renewal Project are solely related to Fordham University's participation as a redeveloper and the corresponding aid and financial subsidy which will be given to a sectarian educational institution by reason of Fordham's participation. At the same time, it should be emphasized that the Project has been considered and passed upon as an entity. The approval and 93 findings by the City Planning Commission pursuant to Section 72-k of the General Municipal Law were based upon considerations of the nature of the entire sixty-eight acres of the Project. Moreover, prior approvals by the Federal Urban Renewal Administration have been predicated upon the condition of the area as a whole. Parenthetically, it should be understood that classification of the Project area as substandard is not made on the basis of the substandard character of each and every structure within the area but is instead based upon an overall determination. Specific individual structures within the Lincoln

Square area are clearly standard and possibly even superior.

Therefore, inasmuch as legally mandatory findings were made with respect to the area as a whole and the redevelopment plan as an entity, if any part of the plan is adjudicated to be illegal, the entire plan as presently formulated and processed, must fall.

The reality of financial aid and subsidy to Fordham University is readily apparent. The
95 entire purpose of Title I of the Federal Housing Act of 1949, as amended, is to provide a subsidy to encourage private enterprise to construct new facilities and structures in areas presently deemed to be substandard. The actual cost of this subsidy is borne two-thirds by the Federal government and one-third by the local authority proposing the project. Specifically, in the case of Lincoln Square, the Acquisition Appraisal, upon which the Project was promulgated and initiated, showed a total estimated cost of acquisition of $41,710,000. The report indicated that this estimate was made on the basis of detailed studies
96 by the Committee on Slum Clearance. The assessed valuation of the Project area was stated in the Acquisition Appraisal to be $34,655,000 for the tax year 1955-1956.

The Acquisition Appraisal estimated an average land acquisition cost of $20.35 per square foot. Nevertheless, Fordham has agreed to purchase the collegiate site and the City of New York has agreed to sell the collegiate site for a price of $7 per square foot. The differential between acquisition cost and the sales price to Fordham, together with supporting facilities provided by the City of New York, will result in a direct subsidy to Fordham University of a sum

in excess of $3,500,000. The precise amount of the subsidy is, however, irrelevant, for any subsidy of any amount, no matter how minimal, is constitutionally precluded.

Defendants will undoubtedly contend that the price to be paid by Fordham represents fair re-use value and fair market value and for that reason no subsidy has been or will be granted.

Even if we examine Fordham's arrangement with the City of New York on the basis of such a position, the realities of the situation show the 98
fact of subsidy.

Initially, it was proposed that Fordham pay a price of $5 per square foot for the collegiate site. At that time the appraisal prepared by George A. Hammer of Charles F. Noyes Co. showed an appraised re-sale value of $4.84 per square foot. However, prior to May 24, 1957, Mr. Hammer raised the proposed disposition price to Fordham to $8 per square foot. This proposed disposition price was subsequently revised downward to $6.75 per square foot, and appraisals by two other appraisers engaged by the Committee on 99
Slum Clearance assigned a re-use value to the collegiate site of $6.71 per square foot and $6.50 per square foot. Significantly, Edward J. Crawford, Jr., one of the appraisers, considered the comparative method of establishing the market value of the real estate in question by collating and analyzing price data on sales of similar and comparable property within the City of New York. Mr. Crawford's analysis showed that in the 24 most recent sales of real property, all but one of the 24 sales were made at a price per square foot greater than the price being paid by Fordham. Seventy-five per cent of those sales were at prices over $16 per square foot, ranging

from $16.20 to $57.87. Only three such sales were made at a price below $10 per square foot. The average price for the 24 sales was $21.50 per square foot. In spite of the result of his analysis of comparable sales in the free market, Mr. Crawford concluded that the re-use value of the collegiate site was $6.71 per square foot. He reached this conclusion by translating an assumed annual income into capital value at an assumed rate of interest.

101 Completely independent, however, of considerations of the accuracy of re-use appraisals, it is clear that the provisions for public auction of the collegiate site cannot result in a free market determination of value, for such value has already been substantially diminished by the limitation on re-use to collegiate institutions, and such restriction has been imposed solely by reason of Fordham University's sponsorship and agreement to purchase. Thus, substantial benefit has been conferred upon Fordham merely by reason of the re-use restriction, for if it were not for such
102 restriction, Fordham would necessarily be competing with other purchasers who might desire to acquire the site for housing or some other purpose.

Even in the absence of these facts, there can be no doubt that federal and local funds are being and will be used for the Lincoln Square Project. The legislative scheme to confer a subsidy to achieve the publicly desirable result of slum clearance is unquestionably valid. However, a sectarian educational institution is constitutionally precluded from obtaining the benefits of such subsidy. If the collegiate sponsor was Columbia University, New York University or some college not affiliated with a particular re-

ligious group, objections to the Project on the grounds of subsidy would be untenable. However, Fordham University, by reason of its denominational character, cannot be granted aid and subsidy regardless of whether such subsidy serves a public purpose.

The framers of the Federal Constitution in the First Amendment (as extended to the States by the Fourteenth Amendment), and the framers of the Constitution of the State of New York, in adopting Article 11, Section 4, believed that in order for religion to survive undominated by the 104
State, a divisive and protective wall must be erected between the two. Any financial aid extended to a religious organization by government must in the end result in governmental control of that religious organization.

The Constitution of the State of New York specifically prohibits such aid and subsidy, regardless of amount. Article 11, Section 4 provides:

> "Neither the State nor any subdivision thereof shall use its property or credit or any 105
> public money, or authorize or permit either to be used, *directly or indirectly,* in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught, but the legislature may provide for the transportation of children to and from any school or institution of learning." (Emphasis supplied.)

Moreover, Article 1, Section 7, of the State Constitution requires the power of eminent domain

to be exercised for a public use. The denominational character of Fordham University results in conflict with that provision of the State Constitution, for, by the very definition of a denominational organization, it is not dedicated to use by the public generally. The fact that Fordham opens its doors to persons who are not of the Roman Catholic faith makes no difference. It is still the Roman Catholic Church which is promoted by Fordham and Fordham is still a creature of that church.

107 The above-stated facts make it clear that the Lincoln Square Urban Renewal Project is illegal and invalidly authorized in that it violates provisions of the Constitution of the State of New York and the First and Fourteenth Amendments of the Constitution of the United States.

Plaintiffs seek a stay pending the hearing and determination of their motion for a temporary injunction restraining the defendants from proceeding with the Lincoln Square Urban Renewal Project. Unless such stay is granted and continued by temporary injunction, plaintiffs will be

108 irreparably injured. The Board of Estimate has now authorized the acquisition of the Project site. Such acquisition will be accomplished by both purchase and condemnation. Thus, the assets of the City of New York are immediately subject to waste by the expenditure of such funds for an illegal purpose. In addition, in the absence of injunctive process, the City of New York can and will enter into contracts for the purchase of portions of the Project area. Such contracts will be legally binding upon the City unless they are made conditional upon a subsequent determination of the legality of the Project. Upon acquisition of realty, eviction proceedings can be and

109

will be commenced against the plaintiffs who are residential and business tenants in the area. Therefore, unless a stay is granted and continued by a temporary injunction order, plaintiffs will be placed in an irretrievable position to their prejudice, for all of which they have no adequate remedy at law.

Plaintiffs believe that they have a good and meritorious action and that there is no defense to this action.

For the foregoing reasons, we respectfully request that defendants be stayed from land acquisition and the further processing of the Lincoln Square Title I Urban Renewal Project and that plaintiffs' motion for a temporary injunction be granted.

110

No prior application has been made for the relief sought herein.

SIDNEY DICKSTEIN.

(Sworn to on November 27, 1957.)

Exhibit A, Annexed to Affidavit of Sidney Dickstein

111

BOARD OF ESTIMATE
MEETING

November 26, 1957, at 11 A. M.

No. 1

R-2682, 7724, 7913, 8167,
8349, 8407

IN THE MATTER of approval of the Urban Renewal Plan, pursuant to Title I of the National Housing Act, and approval of acquisition of real property, pursuant to Section 72-k of the General

112 *Exhibit A*

Municipal Law of the State of New York, for an Urban Renewal Project, designated as Lincoln Square to be erected on a site generally bounded by West 70th Street, Amsterdam Avenue, West 66th Street, Broadway, Columbus Avenue, West 60th Street, Amsterdam Avenue, West 66th Street, and the New York Central Railroad right-of-way, Borough of Manhattan.

The hearing in this matter was fixed for October 24, 1957, by resolution adopted on October 9, 1957 (Cal. No. 113). On October 24, 1957 (Cal. No. 31), the hearing was continued to October 25, 1957. On October 25, 1957 (Cal. No. 1), the hearing was closed and the matter was laid over without date.

113

Communication dated November 12, 1957, from the Deputy Mayor requesting on behalf of the Mayor and the President of the Borough of Manhattan that the matter be restored to the calendar for November 21, 1957.

On November 21, 1957 (Cal. No. 50), the hearing was closed and the matter was laid over to November 26, 1957.

114 Report of the City Planning Commission (CP-13508, dated October 2, 1957) printed in full in Calendar of the Board of Estimate for October 24, 1957 (Cal. No. 31).

Communication dated October 3, 1957, from the Committee on Slum Clearance, submitting reports and relocation schedule for the project.

Communication dated October 16, 1957, from the Committee on Slum Clearance, submitting agreements and resolutions.

Communication dated November 22, 1957, from the Chairman, Committee on Slum Clearance, en-

115

closing copy of a communication dated November 19, 1957 from the Archbishopric of New York withdrawing the offer of St. Matthew's Church to be a tentative sponsor for the institutional site located within the Lincoln Square project, and a copy of a communication dated November 21, 1957 from the American Red Cross offering to sponsor the redevelopment of this institutional site consisting of approximately 50,000 square feet on the west side of Amsterdam Avenue between 66th and 67th Streets under the terms of a redevelopment contract to be approved by the Board of Estimate and the Federal Government.

116

The Committee recommends that the American Red Cross be substituted as the tentative sponsor for redevelopment of this institutional area.

COMMUNICATION dated November 15, 1957, from the Attorneys for Lincoln Guild Housing Corporation requesting the Board of Estimate to waive requirement of furnishing a completion bond contained in Section 502 of the proposed agreement.

Resolutions for consideration, as follows:

117

A—Approving Amendatory Advance Planning Contract. (Passed)

B—Approving Urban Renewal Plan. (Passed)

C—Approving, ratifying and confirming filing of application for Capital Grant Contract. (Passed)

D—Approving Capital Grant Contract. (Passed)

E—(1) Approving Acquisition of real property required for the project. (Passed)

118 *Exhibit A*

(2) That the acquisition by the City of all real property in the project is in the interest of the City, and the health and welfare of its residents and effectuate the purposes of Subdivision 2 of Section 72-k of the General Municipal Law. (Passed)

F—Authorizing Bureau of Real Estate to sell real property acquired for redevelopment in five parcels. (Passed as amended)

G—Approving contract with Lincoln Center for the Performing Arts, Inc., for redevelopment of performing arts site. (Passed as amended)

119

H—Approving contract with Fordham University for redevelopment of Collegiate site. (Passed as amended)

I—Approving contract with Webb & Knapp Lincoln Square Corporation, a wholly owned subsidiary of Webb & Knapp, Inc., for redevelopment of housing site. (Passed as amended)

120

J—Approving redevelopment plan under Redevelopment Companies Law and contract with Lincoln Guild Housing Corporation, a corporation sponsored by the Teachers Guild, for redevelopment of cooperative housing site. (Laid over to Jan. 23, 1958)

K—Approving contract with St. Matthews Roman Catholic Church of the City of New York, for redevelopment of institutional site. (Passed with amendment substituting American Red Cross)

Exhibit A

L—Approving option for purchase at $160,000 of 5 acres in Bayside, Queens, from Cord Meyer Development Company and transfer to National Guard of New York for relocation of Armory. (Laid over to Jan. 23, 1958)

M—Authorizing Comptroller to deposit with State Comptroller for account of National Guard of the State of New York $1,000,000 for aid in construction of new Armory, pursuant to provisions of Section D41-48.0 of the Administrative Code, enacted by Chapter 664 of Laws of 1956. (Laid over to Jan. 23, 1958)

N—Approving option to purchase Kennedy Building for $2,500,000. (Defeated)

O—Authorizing Comptroller to audit accounts. (Passed)

Exhibit B, Annexed to Affidavit of Sidney Dickstein

Map of Lincoln Square.

(See opposite)

APPENDIX I

SITE PLAN

LINCOLN SQUARE URBAN RENEWAL PROJECT

SUBMITTED BY COMMITTEE ON SLUM CLEARANCE

44

130

Affidavit of Robert Moses, Read in Support of Defendants and Defendants-Intervenors' Motions and in Opposition to Plaintiffs' Motions

SUPREME COURT OF THE STATE OF NEW YORK

County of New York

[Same Title]

131

State of New York }
County of New York } ss.:

Robert Moses, being duly sworn, deposes and says:

1. I am the Chairman of the Committee on Slum Clearance, an agency of the City of New York, which is charged with the development, planning and execution of projects for the clearance and redevelopment of slum areas in the City
132 of New York. I am also City Construction Co-Ordinator, Commissioner of Parks, and a member of the City Planning Commission. In addition, I am Chairman of the Triborough Bridge and Tunnel Authority, Chairman of the State Council of Parks, and President of the Long Island Park Commission. I have on occasions been employed as a consultant by other governmental agencies throughout the country to report on improvements in congested areas where knowledge of housing, planning, zoning and real estate was indispensable. In all of these capacities I have attained experience in matters affecting city planning and community redevelopment.

133

2. I have directed and co-ordinated the planning and execution of large-scale slum clearance and neighborhood rehabilitation projects, undertaken by both public agencies and private capital. I am fully familiar with New York City's slum problem, the methods which must be used to combat this evil and the obstacles which must be overcome in order to accomplish sound urban redevelopment.

3. I am familiar with the facts of the above entitled action and the application of the plain- 134
tiffs herein for a temporary injunction.

4. This affidavit is made in opposition to the plaintiffs' motion for temporary injunction. Its purpose is to set forth the facts which demonstrate that:

a. The plaintiffs do not demonstrate a clear legal right to the ultimate relief demanded in their complaint and therefore no right to the drastic remedy of temporary injunction;

b. The plaintiffs will not suffer "irreparable injury" from the acts sought to be enjoined; and 135

c. If such acts should be enjoined, serious public injury far outweighing any possible injury to the plaintiffs would result.

ACTION OF THE BOARD OF ESTIMATE WITH RESPECT TO LINCOLN SQUARE PROJECT

5. At a meeting of the Board of Estimate, on November 26, 1957 (Cal. No. 1), the Board considered resolutions approving the following documents relating to the Lincoln Square Urban Re-

newal Project. The amendatory advance planning contract with the Federal government; the Urban Renewal Plan for the Lincoln Square Project (a copy of which will be handed to the Court and deemed annexed hereto as Exhibit A); an application for capital grant contract with the Federal Government; and a proposed capital grant contract with the Federal Government. The Board also had before it a resolution that the acquisition by the City of all real property in the project area and the sale at public auction thereof
137 as provided in the contract with the Federal government are in the interest of the City and the health and welfare of its residents and effectuate the purposes of General Municipal Law, § 72-K, subd. 2, and a resolution authorizing the acquisition by the City of New York of the real property required for the project.

6. The Board of Estimate approved each of the foregoing Proposals. As a method of effectuating such proposals there was also placed before the Board for consideration a resolution au-
138 thorizing the Bureau of Real Estate to sell the real property acquired for redevelopment in five parcels and five separate resolutions with respect to each of five sponsorship contracts. The Board separately approved the resolution as to the method of sale and each of three of the sponsorship contracts. The Board laid over consideration of a fourth, *i.e.*, a proposed sponsorship contract with Lincoln Guild Housing Corporation relating to the redevelopment of a cooperative housing site; and amended the fifth contract by substituting the American Red Cross for the St. Mathew's Roman Catholic Church of the City of

New York, as a sponsor for redevelopment of the institutional site. Among the four sponsorship contracts thus approved by the Board was that proposed to be entered into with Fordham University for redevelopment of the collegiate site, a draft copy of which, together with amendments approved by the Board, is annexed hereto, and marked Exhibit B.

RELIEF SOUGHT BY THE PLAINTIFFS

140

7. The plaintiffs seek to enjoin the defendants permanently from executing or carrying out the terms of the "sponsorship contract with Fordham University"; from acquiring the project area or any part thereof by condemnation or otherwise; from further processing the project with the Federal Urban Renewal Administration and from expending or committing funds of the City of New York in connection with the project. In this application they seek to enjoin such acts pending the determination of their action for permanent injunction.

141

A. FACTS DEMONSTRATING THAT PLAINTIFFS HAVE NO LEGAL RIGHT TO ULTIMATE RELIEF SOUGHT.

(a) *Judicial Opinion in Loebner v. City of New York.*

8. Before setting forth the facts which demonstrate that there is no likelihood whatsoever of the plaintiffs' ultimate success upon the merits in this action, it is appropriate to set forth the

opinion of Mr. Justice Dineen in *Loebner* v. *City of New York*, 162 N. Y. S. 2d 233, Supreme Ct., Spec. Term, N. Y. Co. 1957, wherein the precise question raised by the plaintiffs was in issue. Though Mr. Justice Dineen dismissed the complaint on the ground that the action was prematurely brought, his opinion clearly indicated that it was his view that there was no merit to the plaintiffs' contention.

Thus, the Court stated:

143 "* * * The plaintiffs contend that from the very beginning of the proposed plan Fordham University and St. Matthew's Roman Catholic church have been recognized not only as potential but eventual purchasers of a portion of the land embraced within the project and that commitments have been made to that effect which are violative of the United States Constitution, First Amendment, and the State Constitution, Article 11, Sec. 4, in that it amounts tc assistance and a subsidy to private or religious institutions.

144 The plaintiffs do not deny that neither constitution prohibits dealing with religious institutions provided no financial aid is extended or given either directly or indirectly. In order to dispel any suspicion or doubt that any such assistance or subsidy might be given it must be assumed that the defendant officials will not violate their statutory duties (*Kane* v. *Walsh*, 295 N. Y. 198, 206, 66 N. E. 2d 53, 56, 163 A. L. R. 1351) and will follow the procedure set forth for the acquisition and disposal by resale of the real property as provided therefor in Section 72-k of the General Municipal Law and also conform to

the National Housing Act of 1949, as amended. In this connection reference must be had to the affidavit of the Chairman of the Committee on Slum Clearance submitted in support of the motion detailing what has been accomplished as of now and what is still sought and necessary in order to bring the project out of the realm of a dream into the world of reality. The statements of the Chairman by reason of the various offices he has held and his experience as a consultant and planner of urban development together 146 with the views of some well-known authorities on neighborhood planning indicate that no community plan of the size intended would be complete without taking into consideration occupancy by churches and schools. This has been recognized as an integral part of well-planned community projects as can be understood from reference thereto found in the Manual of Policies established for use of Local Public Agencies which may seek federal assistance in carrying out their programs. *It seems that no valid objection can be made to the inclusion of schools and churches in the proposed development provided such institutions intend to become part of the project or community at their own expense without gift or subsidy of public funds. That Fordham University and St. Matthew's Church may ultimately become purchasers of the portion of the property sought by them at a price below that at which it was acquired originally for the purposes of redevelopment, is a possibility but not necessarily so and would not constitute a deviation from a public purpose nor a gift* 147

of public funds. If the public good is enhanced it is only secondary that private interests may be benefited (*Murray* v. *LaGuardia*, 291 N. Y. 320, 52 N. E. 2d 884). To assist the defendants in determining whether the project can be carried to a successful completion Fordham University and St. Matthew's Church have indicated a willingness on their part to bid on portions of the land required for their purpose. Such indi-
149 cations are not binding on the defendants nor any other persons or corporations interested in the project. Sponsorship contracts are yet to be drawn and executed and even these contracts have no force and effect to exclude prospective purchasers from becoming successful bidders at the required auction sale for the resale of the land." (Emphasis added.)

(b) *Religious Institutions As Part of a Planned Community.*

150 9. The plaintiffs have raised the following constitutional question: Do the Federal and State Constitutions require that sectarian institutions be excluded from a neighborhood or community which is being replanned and reconstructed as part of a slum clearance and redevelopment project?

10. I have been informed by counsel that there are no constitutional provisions requiring such exclusion. It is my considered opinion that this is the only conclusion consistent with the realities and the needs of sound neighborhood rehabilitation and community planning.

11. There can be no doubt that churches and schools, whether they be public, private or parochial, have always been regarded as an integral and essential part of a neighborhood or community. Zoning laws have reflected this vital axiom of desirable social planning. The Courts of this State and those of other States throughout the nation have taken judicial notice of this fact. Private community developers have reaffirmed it through their conduct as well as their words, and governmental agencies invested with the duty of launching planned communities, have utilized this concept and incorporated it in their plans. Moreover, the many technical studies on community planning and neighborhood redevelopment made by eminent specialists in the field demonstrate clearly the vital necessity for the inclusion of such facilities in planning a desirable neighborhood or community.

12. I do not know of any private community developers who could dispute the validity of this principle. Indeed, Mr. Hugh Potter, 1954 Chairman of the Community Builders' Council of the Urban Land Institute, and developer of the River Oaks Community in Houston, Texas, has expressly stated:

> "I would not think of planning a large tract without providing for several church sites. It gives co-ordination to families in the neighborhood, and aids in development of community spirit * * *." (Community Builders Handbook, Members Edition 1954, prepared by Community Builders Council of the Urban Land Institute, p. 89).

Moreover, in discussing the community facilities which should be included in site planning, the Community Builders Handbook states:

> "Future school and church sites should receive careful attention when establishing the general plan" (page 89).

Clarence Perry, the well-known authority on planned neighborhoods, has also emphasized the importance of churches in the planning of a neighborhood community. In his monograph "The Neighborhood Unit" (Vol. VII of "Regional Survey of New York and Its Environs," published in 1929 by the Committee on Regional Planning of New York and Its Environs), Mr. Perry wrote (pp. 73 and 74):

"CHURCHES

According to the United States religious census of 1916, in the cities of 100,000 to 300,000 population there was one church edifice for approximately every 1,500 people. Ten years earlier the same average was 1,243, showing a gradual trend towards more people per church. In 1916 the average for smaller cities was about 1,200. *On the basis of these data it would seem advisable, in a neighborhood unit of around 5,000 population, to reserve sites for three churches.*

From the standpoint of physical capacity a single large edifice would serve the religious needs of any ordinary neighborhood district, provided the residents were all members of the same faith. Such sectarian homogeneity might happen through a concerted move on

the part of a given religious group or through the selection effected by the sales plan of the development. In either case there would probably be sufficient foreknowledge to serve as a guide in the allotment of a church site.

It is estimated that there are over 800 'community churches' now functioning in the United States. In accordance with this plan several denominations are able to agree upon a form of service and religious endeavor which makes it possible for them to unite in the use of a single edifice. Whether or not, however, such an amalgamation would happen in a given unit could hardly be foretold in advance unless such a plan were definitely a part of the original project. 158

Unless, therefore, the planner has definite knowledge of the religious needs of the future community, he may well reserve sites for three churches in a neighborhood unit which is to have an average American population. * * * " (Emphasis supplied.)

In the same volume of the Regional Survey of New York and Its Environs, Robert Whitten, in his monograph "The Economics of Land Subdivision", writes (at p. 334): 159

"The purpose of public control of the subdivision of the land should be that of securing an appropriate street and block layout with relation to good city planning and zoning principles. It invoives the creation of a good neighborhood environment and its correlation with the planning and zoning of the entire region. Some characteristics or essen-

tials of a good neighborhood environment are as follows:

1. The neighborhood must have all functions and facilities of a complete residence unit. It must have *churches*, schools, shops, assembly halls, clubs and small parks or commons." (Emphasis added.)

Again, in an authoritative discussion of the
161 fundamental principles to be followed in planning desirable and stable communities, the Bulletin of the Federal Housing Administration entitled "Planning Profitable Neighborhoods" states as follows (Technical Bulletin No. 7, U. S. Government Printing Office, 1938, F. H. A. form No. 2370, at p. 12):

"Provide School and Church Sites

If a subdivision is large enough to warrant the consideration of all community requirements, locations should be provided
162 for schools and churches.

* * *

These buildings produce a favorable impression as to the stability of a community and, therefore, should form one of the early demonstrations of neighborhood growth. The selection of convenient sites for such facilities as *schools*, *churches*, and local shopping centers will go far in increasing a subdivision's salability." (Emphasis supplied.)

Further demonstration of the basic proposition that churches and public or parochial schools are

natural and often indispensable components of a neighborhood plan, is found in a study made by the Urban Land Institute (Technical Bulletin No. 16, September, 1951). The purpose of the study was described as follows (p. 5):

"PLANNING COMMUNITY FACILITIES FOR BASIC EMPLOYMENT EXPANSION"

"This manual is designed for the use and guidance of industrial corporations, developers, planners and *public officials who may be concerned either directly or indirectly with the planning and development of living accommodations for employees and their families in new and expanding industrial establishments or other employment centers.* Special emphasis is placed upon clearly understanding the extent of the demand for community facilities generated by new defense installations in an area unprepared for such expansion. *While related directly to the current mobilization program, the procedures outlined are applicable to peace time and can be modified to either long-term or short-term programs.*" (Emphasis supplied.)

164

165

The following discussion of required land uses is set forth at pages 14 and 16 of the Bulletin:

"COMMUNITY LAND USE

The suggested land uses in this section will be discussed in relation to the need per 1,000 employees in basic industry. General land uses which will be required for the com-

munity, exclusive of any requirements for basic industry, are as follows:

* * *

5. Semi-public areas.

a. *Churches.*

b. Hospital or clinic (see discussion, page 16).

c. Private and *Parochial* schools.

167 d. Cemetery area (if any).

e. Hotel, inn, or motel.

f. Other open space uses.

* * *

Semi-Public Buildings

These include *churches*, private and *parochial schools*, community club houses, lodge halls or other similar places of assembly. Sites for these uses should be reserved in the land use plan for the development, but so
168 related to the street system and adjacent area that they may be developed for residential uses if the demand does not materialize for the allocated use." (Emphasis supplied.)

13. All of the above conclusions regarding the necessity for the inclusion of churches and schools in a neighborhood or community plan are based upon experience. Volume II of the Supplementary Report of the Urbanism Committee to the National Resources Committee, dated January 15, 1938 (United States Government Printing Office, Washington, 1939), sets forth the results of a study of 144 planned communities, i.e., com-

munities which were newly constructed from the start according to a more or less comprehensive physical plan. Among the communities studied were those established by industry with a view to providing a suitable labor supply and those established by government in connection with both war-time industry and peace-time public works, such as large dams.

14. I have selected for comment herein only those communities established by governments in order to demonstrate that the fact that such com- 170
munities were set up by governmental agencies did not prevent the inclusion in the community plan of churches and schools. For example, Brooklyn (Noreg Village), in Camden County, New Jersey, was an emergency war housing town developed in 1918 by the Noreg Realty Company for the United States Shipping Board. In describing the community facilities of the town, Vol. II of the Supplementary Report of the Urbanism Committee states at page 56:

> "Churches and schools are located in the east section of the town * * *." 171

Another example of an emergency war housing project developed in 1918 for the United States Shipping Board, is Hilton, located in Warwick County, Virginia. In describing the plan for Hilton, Vol. II of the Supplementary Report of the Urbanism Committee states in part, at page 62:

> "* * * Sites for four churches and a school and community buildings were laid out."

172 Again, in 1918, an emergency war housing project, originally known as Yorkship Village and later known as the Fairview Section of Camden, New Jersey, was established for employees and developed for the United States Shipping Board. The description of the plan, set forth in Vol. II of the Supplementary Report of the Urbanism Committee, contains the following statement:

"*The Plan.*

173 * * *

Provisions for * * * a community building, church and school site to form a self-contained community, were made in keeping with the need and location of the site. * * * "

In 1930, the United States Department of the Interior laid out the plan for Boulder City, Clarke County, Nevada. In describing the application of general planning principles to the town design, Vol. II of the Supplementary Report of the Urbanism Committee states on page 69:

174 "Church sites are grouped in close proximity to each other for the alleged purpose of stimulating religious activities."

Norris, Tennessee, was established in 1933-34 and developed by the Tennessee Valley Authority. The Community facilities are described in part as follows in Vol. II of the Supplementary Report of the Urbanism Committee at page 74:

"*Community Facilities.*

Additional sites have been reserved for about seven other public and semi-public

structures, including an inn, church, club house and additional stores. * * * "

15. After the National Housing Act of 1949 took effect, the Federal Agency having jurisdiction of the program for slum clearance and redevelopment established a Manual of Policies and Requirements For Local Public Agencies seeking federal assistance for such programs. The Manual expressly recognizes that churches and schools are to be included in the redevelopment plans and that such institutions may become the purchasers and redevelopers of some of the cleared parcels. For example Part 2 Chapter 5 § 3 which prescribes the elements of a redevelopment plan states as follows:

"Land uses to be established shall be shown by category-residential, commercial, industrial, public or semi-public, and other use categories as appropriate—and by types within each category.

* * *

(4) public and *Semi-Public* use shall be specifically identified, as 'elementary school,' 'church', etc."

* * *

"SUPPORTING DOCUMENTATION

* * *

PUBLIC AND SEMI-PUBLIC REUSES—INCLUDING COMMUNITY FACILITIES

The types of public and semi-public reuses (school, park, hospital, civic buildings, public parking, fire and police station, church, YMCA or other) and the planning and other considerations which dictated their inclusion shall be discussed."

178 *Affidavit of Robert Moses*

16. The experience of the Federal Housing and Home Finance agency and its predecessors under the federal slum clearance and urban renewal programs is also illustrative of the practical interpretation that governments are not constitutionally precluded from permitting religious institutions to participate in such programs. Thus, information obtained from officials of the Federal Housing and Home Finance Agency indicates that sales of redevelopment parcels were made to churches in the following urban renewal projects:
179

St. Louis Memorial Plaza,
St. Louis, Missouri;
Redevelopment Project No. 1 or 2,
Norfolk, Virginia;
Front Street Project,
Hartford, Connecticut.

The foregoing information was not intended to be exhaustive of all such cases, but was merely transmitted by the Federal Agency as being illustrative of the fact that participation by religious institutions in a redevelopment program is not
180 unusual.

(c) *Facts demonstrating that no "aid" to Fordham University is involved*

17. Plaintiffs complain that the provisions of Section 4 of Article XI of the Constitution of the State of New York and the due process clause of the Federal Constitution have been violated by the action of the Board of Estimate in approving the Lincoln Square Urban Renewal Project and the execution of the sponsorship contracts with

Fordham University. The allegations in support of this conclusion are found in paragraphs "Fifteenth," "Sixteenth," "Eighteenth" and "Nineteenth" of the complaint. These allege that there is contemplated a sale of the collegiate site in the Lincoln Square Urban Renewal area to Fordham University for the price of $7.00 per square foot after acquisition of said site for a price of more than $16.00 per square foot, resulting, it is claimed, in a direct subsidy to Fordham University of a sum in excess of $3,500,000 (Paragraph "Fifteenth"); and that the sale to Fordham University of such property at any price will result in an indirect subsidy to that University in that it will be aided by the condemnation power of the City of New York (Paragraph "Fifteenth"). 182

18. The gravamen of the complaint made by the plaintiffs in this connection appears to be that the City of New York has or is about to enter into a contract with Fordham University binding the City to sell the collegiate site to that institution. In this the plaintiffs choose to misunderstand the nature of the sponsorship contract. 183

19. No slum clearance and redevelopment plan could possibly be undertaken by the City without the assurance that at the auction sale there would be at least one redeveloper for each portion of the property to be privately redeveloped, who would make a minimum bid at an agreed upset price for such portion of the area offered for sale. The City obtains this assurance by inviting preliminary bids during the early formative stages of the plan for the purpose of ascertaining whether there are persons willing to undertake redevelop-

ment in a site in accordance with the proposed plan. When the plan moves toward final completion, these interested persons are invited to enter into contracts which are called sponsorship contracts. The purpose of these contracts is to make certain that there will be available at the public auction, bidders willing to acquire title for the purpose of redevelopment in accordance with the plan.

185 20. Thus it is clear that the sponsorship contract which has been approved by the Board of Estimate for execution with Fordham University is intended only to assure the City that at least one bidder will appear at the public sale and that there is at least one educational institution interested in developing the site in accordance with the Plan. It does not constitute the sole method by which the redevelopment of the "Collegiate" site might be effectuated. It is merely the most expeditious method in the judgment of the officials of the City of New York. It is important to note that even if Fordham executes the sponsorship
186 contract, bidding at the public sale for the educational area will *still* be open to any institution, nonsectarian or sectarian, willing to devote the area to educational purposes. Since there is no requirement in the Plan that the successful bidder be a sectarian institution, it does not necessarily follow, as the plaintiffs assume, that Fordham University *must* be the successful bidder. In this connection we point to paragraph 302 at page 12 of the proposed sponsorship contract between the City and Fordham University, annexed hereto as Exhibit B. In that paragraph the contract clearly provides that while the land in the educational

site (called the collegiate site in the contract) must be used "solely for educational purposes, including uses normally concomitant to such purposes," it also provides that "the plans finally utilized for construction of the Project and that the actual buildings, building locations and other site details will be further developed" subject to the approval of the Committee on Slum Clearance. It also provides that the site plan included therein is only one of the "possible" plans and not necessarily the plan finally utilized for the project (Exhibit B, p. 12 § 302). Elsewhere 188
throughout the contract it clearly appears that the contract is conditional upon Fordham being the successful bidder (See for example, pp. 3, 4, 6 and 7).

21. The foregoing demonstrates conclusively, contrary to the plaintiffs' assertions, that this Plan is not so hedged about with restrictions as to make it impossible for any educational institution other than Fordham University to be the redeveloper of the educational site. I emphasize the fact that the Plan calls for the development of 189
this area for "*Collegiate*" *purposes* (Exh. A, p. R-3). It is broad enough to permit of its effectuation by a nonsectarian college as well as by a sectarian college. The execution of the sponsorship contract will not change the Plan but will merely be affording to Fordham University the same right as could be afforded under the Plan to any nonsectarian educational institution. That the identity of the sponsors is not an essential element of the Plan is conclusively proved by the fact that the Plan was approved by the Board of Estimate even though one of the tentative spon-

sors, St. Matthews Roman Catholic Church, withdrew at the very last moment while its sponsorship contract was pending before the Board of Estimate for approval, and without any difficulty the American Red Cross was substituted as a proposed sponsor for redevelopment of the institutional area. (See Plaintiffs' Exhibit A annexed to affidavit of Dickstein). The same can happen with equal facility with respect to the educational area.

191 22. Even assuming what cannot now be known to be a fact—that the cost of acquisition of the land to the City of New York will be $16.00 per square foot and that Fordham University will be the successful bidder at $7.00—no aid or subsidy to Fordham University will thereby result. It must be borne in mind that the cost at which the City will acquire the property by condemnation will be the fair market value as of the time of taking. Reflected in this amount must be such factors as the value of the improvements and the value of the land for its best available use. On
192 the other hand, when the property so acquired is offered for sale in furtherance of the Slum Clearance and Redevelopment Project Plan, it will be offered for sale, as General Municipal Law sec. 72-k requires, under terms, conditions and proposed deed restrictions which narrowly restrict its future use and which, furthermore, will require the successful bidder to relocate the site occupants, clear the site and complete the redevelopment improvement, all upon time schedules fixed by the Board of Estimate in accordance with the

terms and conditions of the Plan. Thus, it is clear that there is no equivalence between what the City acquires and what it sells to private redevelopers. It therefore follows that no valid comparison can be made between what the City pays for what it has acquired and the amount it receives for what it sells. Consequently, the granting of a subsidy may not be inferred from the fact that it cost the City more to acquire the land subsequently resold. If the City incurs a monetary "loss" upon the resale, that "loss" is merely the price of the ben- 194
efits derived by the public from elimination of a slum, the assurance that the consummation of the Plan will prevent the recurrence of slum conditions and the obligation of the redeveloper to bear the cost of demolition and relocation. The requirement for public bidding (Gen. Mun. Law, § 72-k) excludes the possibility that the redeveloper will acquire the land at less than "its fair value for the uses specified in the redevelopment plan". [National Housing Act of 1949 Title I Sec. 103(a)].

It goes without saying that here, as in all prior 195
slum clearance projects, the public agencies involved will comply with the law and the redevelopers to whom the land is made available will be those who have bid the highest price at public auction. Requirements of a bona fide sale are thereby met; there will thus be affected a fair exchange of considerations. No gift of public funds is involved in a situation of this nature.

23. The mere fact that condemnation is exercised to accomplish the public purposes of clearing a slum area does not in and of itself result in "aid" to the redeveloper if it should happen to be

a religious institution. It is common knowledge that most of the property owned by the City has been acquired at some time or other through the exercise of the power of condemnation. This fact has never been regarded as constituting a bar to the sale of city-owned property to a religious organization. Indeed there are many instances of legislation authorizing the sale of publicly-owned property to philanthropic institutions of a sectarian nature. (*e.g.*, see Laws of 1963, ch. 360, § 1, reenacted as Administrative Code, § D41-8.0;
197 Laws of 1919, ch. 508, § 1, reenacted as Administrative Code, § D41-12.0; Laws of 1929, ch. 451, § 1, reenacted as Administrative Code, § D41-18.0). Thus, if the City were to carry this project forward by approval of the Plan and condemnation of the site and thereafter offer it for sale at public auction for redevelopment, obviously, no unconstitutional "aid" could possibly be spelled out if Fordham happened to be the successful bidder. The mere fact that Fordham has, in advance of the public sale, indicated its willingness to be a redeveloper cannot alter the logic of this
198 demonstration.

24. The plaintiffs allege in paragraph "Eleventh" of the complaint that the upset price for the educational area that Fordham University will be required to bid has been revised from $5 a square foot to $8 to $6.75 and finally to $7, and the affidavit in support of the motion for temporary injunction (pp. 10-11) attempts to indicate that the final upset figure of $7 a square foot bears no relation to the fair re-use and the fair market value of the site for use as a collegiate area.

However, allegations of this type are irrelevant to the question in issue. General Municipal Law § 72-k requires the resale price be that determined by a sale at public auction. Preliminary appraisals such as those alleged by the plaintiffs are intended merely to facilitate the holding of the public auction. The fair reuse value of a particular property is the price obtained at the public auction.

This principle is implicitly recognized in plaintiff's own claim of subsidy which by their own theory is measured by the difference between the cost of acquisition and the actual resale price. (Affid. of Dickstein, p.10.) 200

B. Facts Demonstrating That the Plaintiffs Will Not Suffer Irreparable Injury From the Actions Sought to Be Enjoined.

25. The plaintiffs concede that:

> "if the collegiate sponsor was Columbia University, New York University, or some college not affiliated with a particular religious group, objections to the project on the grounds of subsidy would be untenable" (Affidavit of Sidney Dickstein, p. 12). 201

It follows from this concession that in so far as the Plan provides for the redevelopment of a section of the area for collegiate purposes, the exercise of condemnation for its effectuation is unassailable. It further follows that if a sponsorship contract were to be executed with a nonsectarian education institution, condemnation in that event would likewise be unassailable. Since

an examination of the plan demonstrates unquestionably that there is nothing in the plan which limits its effectuation to a sectarian institution (see Exhibit A, deemed annexed hereto, p. R-3), condemnation for the purpose of effectuating the Plan is unquestionably legal *on the basis of the plaintiffs' own concession* as well as on the basis of the well-established judicial authorities which will be cited in the brief in opposition to the plaintiffs' application.

203 26. Therefore, plaintiffs' allegations of irreparable injury must be confined to the consequences that might ensue if Fordham University executes the sponsorship contract approved by the Board of Estimate and becomes the successful bidder at the public auction. I have been advised by counsel, and I believe this affidavit supports the conclusion, that there is no merit whatsoever to the plaintiffs' claim of such unconstitutionality. However, assuming, without conceding, that the execution of a sponsorship contract with Fordham University and of a rede-
204 velopment contract in the event that it is the successful bidder should be held to be unconstitutional, *this would not affect the legality of the condemnation of the area for the purposes of effectuating the Plan.* Just as a new non-sectarian sponsor was substituted when the St. Matthew's Roman Catholic Church withdrew, so could a new non-sectarian sponsor be substituted for the development of the area in accordance with the Plan. The only result of such a holding would be the ineligibility of Fordham University to be the redeveloper. The public purpose which

supports the exercise of condemnation would not be diminished in any way by the necessity of finding a substitute for Fordham University.

27. Contrary to the contention made by the plaintiffs, the Board of Estimate separately approved the Redevelopment Plan and separately considered each sponsorship contract which was placed before it. This is apparent from the plaintiffs' own Exhibit A (annexed to the affidavit of Dickstein). Thus, while approving the Plan, the Board did not approve every sponsorship contract placed before it. The contract with the Lincoln Guild Housing Corporation was laid over to January 23, 1958, and the proposed contract with St. Matthews Roman Catholic Church for redevelopment of the institutional site was amended by substituting the American Red Cross in place of the Church as a sponsor. 206

28. In other parts of the country, it has been the practice of cities in processing urban renewal projects, to draw up plans and condemn slum property without soliciting tentative sponsors until after approval of the plans and condemnation. Surely, if that had been done in the present case, the plaintiffs, by their own concession, would have no basis for challenging the constitutionality of the condemnation proceeding. 207

29. It thus appears that regardless of who turns out to be the sponsor and redeveloper of the collegiate area, the exercise of condemnation and the expenditure of funds for the purpose of clearing and redeveloping the area is legal. As stated

208 by the Court in *Kaskel* v. *Impellitteri, supra*, 306 N. Y. 73, 93 "Section 72-k of the General Municipal Law is drawn upon the basis, upheld in *Matter of Murray* v. *LaGuardia*, that slum clearance is in itself a public purpose, which is separate and distinct from the objects to which the land may subsequently be devoted after being redeveloped by private capital." The plaintiffs, whether they be taxpayers or residents of the area, would still have to accept the normal consequences of
209 condemnation. Thus their injury, if any, flows from the clearly legal act of condemnation and not from the proposed sponsorship of Fordham University. Therefore, such injury does not constitute "irreparable injury" which equity may enjoin.

C. Facts Demonstrating Grave Public Injury From Granting of Injunction.

30. Conversely, if the acts complained of herein were to be enjoined, serious public detriment would result. After a long period of negotiation
210 and processing, a slum area is about to be cleared in the public interest. Responsible sponsors are ready and willing to cooperate with the city and federal governments in this important public purpose. A stay of the activities necessary to effectuate the plan might well result in a loss to the city of one or more sponsors by the time the stay is lifted. Rising prices, labor costs, lessened availability of materials, and changes in the status or position of the sponsors could intervene to cause a change in the present intentions. Moreover, the bargaining position which the city has

obtained through its continuous negotiations over the period since the inception of the Lincoln Square project could be undermined by such a stay, and the time, energy and public funds which have already been expended for the effectuation of this vital public purpose might be lost.

31. In view of the foregoing, it is apparent that while the plaintiffs will be in the same position whether or not Fordham is held to be legally eligible for sponsorship and redevelopment of the collegiate area, the public will be gravely injured 212 by any stay that might be imposed during the pendency of the present action.

32. For the foregoing reasons, I respectfully urge that the application for a temporary injunction be denied, with costs.

ROBERT MOSES.

(Sworn to on December 4, 1957.)

Exhibit A, Annexed to Affidavit of Robert Moses 213

Urban Renewal Plan and Maps.

(Omitted by Stipulation.)

Exhibit B, Annexed to Affidavit of Robert Moses

Proposed Sponsorship Agreement Between the City of New York and Fordham University.

(Omitted by Stipulation.)

214

Answer

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

Defendants, by Peter Campbell Brown, Cor-
215 poration Counsel, their attorney, answering the complaint herein, alleges:

ANSWERING THE FIRST CAUSE OF ACTION

1. Deny each and every allegation contained in paragraph "Third" of the complaint and respectfully refer the Court to the provisions of Section 72-k of the General Municipal Law for the content and meaning thereof.

2. Deny each and every allegation of para-
216 graph "Fifth" of the complaint and respectfully refer the Court to the Lincoln Square Urban Renewal Project Plan, a copy of which is annexed hereto as Exhibit A and made a part hereof, and to the applicable statutes.

3. Deny each and every allegation contained in paragraph "Sixth" of the complaint, except admit that the Lincoln Square Urban Renewal Project Plan includes a site of approximately 320,230 square feet comprising the collegiate area, and housing sites and a site for a performing arts center.

217

4. Deny each and every allegation contained in paragraph "Seventh" of the complaint, except admit that the procedures followed by the defendants include the execution of an agreement between the City of New York and persons who had indicated their willingness to become redevelopers of the Project site; that the agreements so executed between the City of New York and the sponsors or redevelopers contain provisions by which, among other things, the sponsor agrees to bid a minimum price at the public auction of the site to be redeveloped; that upon purchase of said site the sponsor agrees to use it for the purpose set forth in the Project plan and the City of New York agrees to acquire the site by condemnation or otherwise, to sell the site at public auction, and to convey the site to the sponsor if the said sponsor is the successful bidder at the sale; that said sponsorship agreements may only be executed after the Board of Estimate has approved the project plan and authorized the execution of the sponsorship contract.

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5. Deny each and every allegation contained in paragraph "Eighth" of the complaint, except admit that in the judgment of the defendants the procedure for obtaining tentative sponsors for redevelopment of the project area is the most feasible method of effectuating the project plan.

6. Deny each and every allegation contained in paragraphs "Tenth" and "Eleventh" of the complaint, except admit that defendant Moses received an offer from Fordham University to become the sponsor of the collegiate area and to bid

at the public sale thereof after its acquisition at a price of $5 a square foot, which was later increased to $6.75 a square foot and finally fixed at $7 a square foot and that said offer was conditionally approved by defendant Moses subject to final approval by the Board of Estimate of the City of New York.

7. Upon information and belief, deny each and every allegation contained in paragraph "Twelfth" of the complaint, except admit that
221 Fordham University is an educational corporation incorporated by Special Act of the Legislature of the State of New York [Chapter 61, Laws of 1846]; that said University is conducted by members of the Society of Jesus, a religious order of the Roman Catholic Church; that enrollment therein is not limited to students of the Catholic Faith; and that courses in the Catholic Religion are conducted in certain of its schools.

8. Deny each and every allegation contained in paragraph "Thirteenth" of the complaint, ex-
222 cept admit that the solicitation of sponsorship bids for the sites comprising the project area was widely advertised; admit that no educational institution other than Fordham University submitted a tentative bid for the collegiate site; admit that if Fordham University is the successful bidder at the public auction of the collegiate site after its acquisition by the City of New York, the City of New York will be obligated to sell the collegiate site to Fordham University pursuant to the sponsorship agreement which has been approved by the Board of Estimate and provided

223

that such sponsorship agreement is executed by Fordham University; and further deny any knowledge or information sufficient to form a belief as to the allegation "that there is no institution which presently intends and has funds available to purchase, 320,230 square feet in the Borough of Manhattan at a price of $7 per square foot for the use required by the Project Plan".

9. Deny each and every allegation contained in paragraph "Fourteenth" of the complaint, except admit that the cost of acquisition of the collegiate site has been estimated to be in excess of $16 a square foot.

224

10. Deny each and every allegation contained in paragraphs "Fifteenth", "Eighteenth", "Nineteenth" and "Twentieth" of the complaint.

11. Deny each and every allegation contained in paragraph "Sixteenth" of the complaint, except admit that after submission of the Project Plan by the Committee on Slum Clearance to the City Planning Commission and after public hearings held on September 11, 1957, the City Planning Commission approved the Project Plan in a report dated October 2, 1957, a copy of which is annexed hereto as Exhibit C.

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12. Deny each and every allegation contained in paragraph "Seventeenth" of the complaint except admit that after public hearings held on October 25, 1957 the Board of Estimate on November 26, 1957 took action with respect to the Lincoln Square Urban Renewal Plan as is more particularly set forth in Exhibit D annexed hereto and made a part hereof.

226 *Answer*

ANSWERING THE SECOND CAUSE OF ACTION

13. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "Twenty-first" and "Twenty-second" of the complaint.

14. Deny each and every allegation contained in paragraphs "Twenty-third" and "Twenty-fifth" of the complaint except as otherwise pleaded herein.

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15. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "Twenty-fourth" and "Twenty-sixth" of the complaint, except admit that the Board of Estimate has approved the Project Plan and the acquisition by condemnation or otherwise of the area comprised within the project including the collegiate site and that the premises known as 101 West 60th Street, 49 Amsterdam Avenue and 40 Columbus Avenue are situated within the collegiate area.

228

16. Deny each and every allegation contained in paragraphs "Twenty seventh" and "Twenty-eighth" of the complaint.

FOR A FIRST, DISTINCT AND SEPARATE DEFENSE TO THE CAUSES OF ACTION ALLEGED IN THE COMPLAINT, DEFENDANTS ALLEGE:

17. Article 18 of the Constitution of the State of New York, authorizes the State Legislature to provide in such manner, by such means and upon such terms and conditions as it may prescribe for "the clearance, replanning, reconstruction and

rehabilitation of sub-standard and insanitary areas, * * * ". Said article further provides that "for and in aid of such purposes, notwithstanding any provision in any other article of this Constitution" the Legislature may "authorize cooperation with and the acceptance of aid from the United States;" and "grant the power of eminent domain to any city."

18. Pursuant to Article 18 of the Constitution, the State Legislature enacted General Municipal Law, Section 72-k, which authorizes the governing 230
board of a municipal corporation to acquire real property necessary for or incidental to the clearance, re-planning, reconstruction and neighborhood rehabilitation by the purchaser in such manner as may be prescribed by the Board of Estimate or other governing body.

19. Pursuant to the above quoted constitutional and statutory provisions, the Committee on Slum Clearance submitted to the City Planning Commission an urban renewal plan for the Lincoln Square Urban Renewal Project. The said Com- 231
mission held a public hearing on the said plan on September 11, 1957. After such hearing and after consideration and analysis of the proposal, the City Planning Commission adopted a report dated October 2, 1957, a copy of which is annexed hereto as Exhibit C. Said report sets forth the consent of the City Planning Commission for the acquisition of the real property in the Project area and the finding of the City Planning Commission made after a public hearing, that such acquisition is necessary for the clearance, replanning, reconstruction and neighborhood rehabili-

tation of real property in a sub-standard and insanitary area.

20. On October 24 and 25, 1957, the Board of Estimate held a public hearing upon the Lincoln Square Urban Renewal Plan. At its meeting on November 26, 1957 the Board of Estimate took action with respect to the Lincoln Square Urban Renewal Project as is more particularly set forth in Exhibit D annexed hereto and made a part hereof. Among the resolutions adopted by the
233 Board of Estimate in furtherance of this plan for the clearance and redevelopment of the Lincoln Square area were:

a. A resolution approving the Lincoln Square Urban Renewal Plan (Cal. No. 1-B, a copy of which is annexed hereto as Exhibit E —the Urban Renewal Plan which was approved by this resolution is already annexed to this answer as Exhibit A);

b. A resolution approving a capital grant contract to be entered into between the City
234 and the Federal government (Cal. No. 1-D; a copy of which is annexed hereto as Exhibit F—a copy of the proposed capital grant contract which was approved by this resolution is annexed hereto as Exhibit G);

c. A resolution approving acquisition of the real property required for the Project (Cal. No. 1-E-(1), a copy of which is annexed hereto as Exhibit H);

d. A resolution setting forth that the acquisition by the City of all real property in the Project is in the interest of the City and the

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health and welfare of its residents and effectuates the purposes of subdivision 2 of Section 72-k of the General Municipal Law (Cal. No. 1-E-(2), a copy of which is annexed hereto as Exhibit I);

e. A resolution authorizing the Bureau of Real Estate to sell real property acquired for redevelopment at public auction, passed as amended (Cal. No. 1-F, a copy of which is annexed hereto as Exhibit J);

236

f. A resolution approving a proposed sponsorship contract with Fordham University relating to the redevelopment of the collegiate site (Cal. No. 1-H, a copy of which is annexed hereto as Exhibit K; the proposed sponsorship contract with Fordham University which was approved by this resolution is annexed hereto as Exhibit B).

21. The acts performed by the defendants herein as set forth in the report of the City Planning Commission and in the resolutions and minutes of the meeting of the Board of Estimate, as above set forth, and the acts and the effectuation of the said Urban Renewal Project are in connection with the acquisition of property for the clearance, replanning and redevelopment of a sub-standard and insanitary area and are in conformance with and pursuant to the provisions of Article 18 of the New York State Constitution and General Municipal Law, Section 72-k.

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22. The acquisition of a sub-standard and insanitary area for clearance and redevelopment is sanctioned by New York State Constitution,

238 Article 18, and General Municipal Law, Section 72-k. The acquisition of real property for the clearance, replanning and redevelopment of a sub-standard and insanitary area are for a public use and the expenditure of monies by the City of New York with respect thereto is lawful and is not a waste of the City's funds or property.

FOR A SECOND, DISTINCT AND SEPARATE DEFENSE TO THE CAUSES OF ACTION ALLEGED IN THE COMPLAINT, DEFENDANTS ALLEGE:

239 23. Upon the acquisition by the City of the Lincoln Square Project area for clearance, replanning and redevelopment, the property in the said area will be resold at the highest marketable price at public auction to redevelopers who will be required to clear and redevelop the property in the manner and subject to the conditions and restrictions as prescribed by the Board of Estimate in accordance with Section 72-k of the General Municipal Law.

240 24. The sponsorship contract with Fordham University, as annexed hereto as Exhibit B, does not violate the provisions of Article 11, Section 4 of the Constitution of the State of New York nor the provisions of the First and Fourteenth amendments to the Constitution of the United States.

25. The resale of the collegiate site of the Lincoln Square Project area to Fordham University, if it should be the highest bidder at the public auction, as aforesaid, will not violate the provisions of Article 11, Section 4 of the Constitution of the State of New York nor the First and Four-

teenth amendments of the Constitution of the United States.

WHEREFORE, defendants pray for judgment dismissing the compiaint and that they be granted such other, further, different or alternative relief as to the Court may seem just and proper, together with the costs and disbursements of this action.

PETER CAMPBELL BROWN,
Corporation Counsel,
Attorney for Defendants,
Office & P. O. Address,
Municipal Building,
Borough of Manhattan,
City of New York.

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(Verified.)

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Exhibit A, Annexed to Answer

Urban Renewal Plan and Maps.

(Omitted by stipulation.)

Exhibit B, Annexed to Answer

Proposed Sponsorship Agreement between the City of New York and Fordham University.

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(Omitted by stipulation.)

Exhibit C, Annexed to Answer

City Planning Commission Report on Lincoln Square Urban Renewal Plan and Project, October 2, 1957, CP-13508, Cal. No. 2.

(Omitted by stipulation.)

246

Exhibit D, Annexed to Answer

Resolutions of Board of Estimate of November 26, 1957.

(Omitted—same as Exhibit A annexed to affidavit of Sidney Dickstein, verified November 27, 1957.)

247

Exhibit E, Annexed to Answer

BOARD OF ESTIMATE

CITY OF NEW YORK

(Cal. No. 1—Item B)

Resolution of Board of Estimate of The City of New York Approving the Urban Renewal Plan and the Feasibility of Relocation for Project No. N.Y. R-2.

WHEREAS, Under the provisions of Title I of the Housing Act of 1949, as amended, the Housing and Home Finance Administrator is authorized to provide financial assistance to local public agencies for undertaking and carrying out urban renewal projects; and 248

WHEREAS, It is provided in such Act that contracts for financial aid thereunder shall require that the Urban Renewal Plan for the respective project area be approved by the governing body of the locality in which the project is situated and that such approval include findings by the governing body that: (1) the financial aid to be provided in the contract is necessary to enable the project to be undertaken in accordance with the Urban Renewal Plan; (2) the Urban Renewal Plan will afford maximum opportunity, consistent with the sound needs of the locality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise; and (3) the Urban Renewal Plan conforms to a general plan for the development of the locality as a whole; and 249

250 *Exhibit E*

WHEREAS, The City of New York (herein called the "Local Public Agency") has entered into a planning contract for financial assistance under such Act with the United States of America acting by and through the Housing and Home Finance Administrator, pursuant to which Federal funds are provided for the urban renewal project (herein called the "Project") identified as "Lincoln Square" and encompassing the area bounded by West 60th Street, Amsterdam Avenue, West 66th Street, lands of New York Central Railroad,
251 West 70th Street, Amsterdam Avenue, West 66th Street and Columbus Avenue in the City of New York, State of New York (herein called the "Locality"); and

WHEREAS, The Local Public Agency has applied for additional financial assistance under such Act and proposes to enter into an additional contract or contracts with the Housing and Home Finance Agency for the undertaking of, and for making available additional financial assistance for, the Project; and

252 WHEREAS, The Local Public Agency has made detailed studies of the location, physical condition of structures, land use, environmental influences, and the social, cultural, and economic conditions of the Project area and has determined that the area is a substandard and insanitary area and that it is detrimental and a menace to the safety, health, and welfare of the inhabitants and users thereof and of the Locality at large, because of excessive coverage by predominantly old law tenement type buildings, serious disrepair and critical

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deficiency in sanitary facilities of the residential structures, incompatible conversions of buildings and incompatible mixture of uses within the area and the members of this Governing Body have been fully apprised by the Local Public Agency and are aware of these facts and conditions; and

WHEREAS, There has been prepared and referred to the Board of Estimate of the Locality (herein called the "Governing Body") for review and approval an Urban Renewal Plan for the Project Area, dated January 28, 1957 as revised to August 19, 1957, and consisting of 6 pages, 2 Exhibits and 9 Maps supported by the Land Acquisition Plan, Land Disposition Plan and Cost Estimates and other documentation incorporated in the Final Project Report; dated January 28, 1957 as revised to August 19, 1957 and Comprehensive Relocation Plan which material, data and recommendations are not a part of said Urban Renewal Plan; and

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WHEREAS, A general plan has been prepared and is recognized and used as guide for the general development of the Locality as a whole; and

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WHEREAS, The City Planning Commission, which is the duly designated and acting official planning body for the Locality, has submitted to the Governing Body its report and recommendations respecting said Urban Renewal Plan for the Project area and has certified that said Urban Renewal Plan conforms to the said general plan for the Locality as a whole, and the Governing Body has duly considered said report, recommendation, and certification of the planning body; and

256 *Exhibit E*

WHEREAS, Said Urban Renewal Plan for the Project area prescribes certain land uses for the Project area and will require, among other things, changes in zoning, the vacation and removal of streets, alleys and other public ways, the establishment of new street patterns, the location and relocation of sewer and water mains and other public facilities, and other public action; and

WHEREAS, The Local Public Agency has prepared a plan for the relocation of families that
257 may be displaced as a result of carrying out the Project in accordance with said Urban Renewal Plan and has submitted to the Governing Body a Relocation Plan for the Project, identified as "Comprehensive Relocation Plan"; and

WHEREAS, There has also been presented to the Governing Body information and data respecting the Relocation Plan which has been prepared by the Local Public Agency as a result of studies, surveys, and inspections in the Project area and the assembling and analysis of the data and in-
258 formation obtained from such studies, surveys, and inspections; and

WHEREAS, The members of this Governing Body have general knowledge of the conditions prevailing in the Project area and of the availability of proper housing in the locality for the relocation of families that may be displaced from the Project area and, in the light of such knowledge of local housing conditions, have carefully considered and reviewed such Relocation Plan; and

WHEREAS, It is necessary that the Governing Body take appropriate official action respecting

the Relocation Plan and said Urban Renewal Plan for the Project, in conformity with the contract or contracts for financial assistance between the Local Public Agency and the United States of America acting by the Housing and Home Finance Administrator; now, therefore, be it,

Resolved, By the Board of Estimate of The City of New York as follows:

1. That it is hereby found and determined that the Project is a substandard and insanitary area and qualifies as an eligible Project area under Section 72-k of the General Municipal Law; 260

2. That said Urban Renewal Plan for the Project aforementioned, having been duly reviewed and considered, it is hereby approved, and the Secretary of the Board of Estimate be and is hereby directed to file said copy of said Urban Renewal Plan with the minutes of this meeting;

3. That it is hereby found and determined that said Urban Renewal Plan for the Project area conforms to said general plan of the Locality; 261

4. That it is hereby found and determined that the financial aid provided and to be provided pursuant to said contract for financial assistance pertaining to the Project is necessary to enable the land in the Project area to be redeveloped in accordance with the Urban Renewal Plan for the Project area;

5. That it is hereby found and determined that the above mentioned Urban Renewal Plan for the

262 *Exhibit E*

urban renewal area will afford maximum opportunity, consistent with the sound needs of the Locality as a whole, for the urban renewal of such areas by private enterprise;

6. That it is hereby found and determined that the proposals set forth in the Relocation Plan for the proper relocation of the families displaced in carrying out the Project in decent, safe and sanitary dwellings in conformity with acceptable standards are feasible and can be reasonably and
263 timely effected to permit the proper prosecution and completion of the Project; and that such dwellings available or to be made available to such displaced families are at least equal in number to the number of displaced families and are not generally less desirable in regard to public utilities and public and commercial facilities than the dwellings of the displaced families in the Project area, are available at rents or prices within the financial means of the displaced families, and are reasonably accessible to their places of employment.

264 7. That in order to implement and facilitate the effectuation of the Urban Renewal Plan hereby approved it is found and determined that certain official action must be taken by this Body with reference, among others, to changes in zoning, the vacation and removal of street, alleys and othr public ways, the establishment of new street patterns, the location and relocation of sewer and water mains and other public facilities and, accordingly, this Body hereby: (a) pledges its cooperation in helping to carry out such Urban

Exhibit E 265

Renewal Plan; (b) requests the various officials, departments, boards, and agencies of the Locality having administrative responsibilities in the premises likewise to cooperate to such end and to exercise their respective functions and powers in a manner consistent with said Urban Renewal Plan; and (c) stands ready to consider and take appropriate action upon proposals and measures designed to effectuate said Urban Renewal Plan; and

8. That additional financial assistance under 266
the provisions of Title I of the Housing Act of 1949, as amended, is necessary to enable the land in the Project area to be renewed in accordance with the Urban Renewal Plan for the Project area and, accordingly, the filing by the Local Public Agency of an application or applications for such financial assistance under said Title I is hereby approved.

A true copy of resolution adopted by the Board of Estimate on November 26, 1957.

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RUTH W. WHALEY,
Secretary.

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Exhibit F, Annexed to Answer

#1-D 11-26-57

WHEREAS, Under Title I of the Housing Act of 1949 as amended and supplemented, the United States of America (herein called the "Government") has tendered to The City of New York (herein called the "Local Public Agency") a proposed offer of "Capital Grant Contract," pursuant to which the Government would extend certain federal financial assistance to the Local
269 Public Agency in connection with a certain urban renewal project described as Lincoln Square and designated Project No. N.Y. R-2; and

WHEREAS, The Local Public Agency has given due consideration to said proposed offer; and

WHEREAS, The Local Public Agency is duly authorized, under and pursuant to the Constitution and Laws of the State of New York to undertake and carry out said project and proposed contract; now, therefore, be it

270 RESOLVED, By the Board of Estimate, as follows:

Section 1. The proposed offer of the Government to the Local Public Agency designated "Capital Grant Contract" Contract No. N.Y. R-2(G) consisting of Parts I and II providing for the making by the Government to the Local Public Agency of a project Capital Grant under Title I of the Housing Act of 1949 as amended in connection with that certain project described therein which is situated in the Borough of Manhattan, City of New York, and is designated in

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said proposed contract as Project No. N.Y. R-2 is hereby in all respects approved and accepted.

Section 2. The Mayor or Deputy Mayor is hereby authorized and directed to execute the "Capital Grant Contract" Contract No. N.Y. R-2(G) when executed by the Housing and Home Finance Administrator, acting for the United States of America, substantially in the form herein considered, approved as to form by the Corporation Counsel and the Acting City Clerk is hereby authorized and directed to attest the same and affix the seal of The City of New York.

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Section 3. The Chairman, or Assistant to Chairman, or Director of the Committee on Slum Clearance is hereby authorized and directed to forward counterparts of said Capital Grant Contract to the Housing and Home Finance Agency, together with such other documents relative to the approval and acceptance thereof as may be required by the Government.

Section 4. The Chairman, or Assistant to the Chairman, or Director is hereby authorized to execute and file requisitions, together with necessary supporting documents, with the Government, in accordance with the Capital Grant Contract, requesting payments to be made on account of the Project Capital Grant provided in the Capital Grant Contract, and to do and perform all other things and acts required to be done or performed in order to obtain such payments.

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Section 5. This resolution shall take effect immediately.

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Exhibit G, Annexed to Answer

Proposed Capital Grant Contract between City of New York and Urban Renewal Administration.

(Omitted by stipulation.)

Exhibit H, Annexed to Answer

#1-E1 11/26/57

275 WHEREAS, following public hearings, the City Planning Commission has found that substandard conditions and insanitary housing conditions exist in the Lincoln Square Area, and has further found that the Acquisition by the City of the real property comprising the area is necessary for the clearance, replanning, reconstruction and neighborhood rehabilitation of real property in a substandard and insanitary area and has consented thereto under the provisions of Subdivision 2 of Section 72-k of the General Municipal Law as amended, and

276 WHEREAS, The Board of Estimate, following public hearing, has found that the acquisition by the City of all the real property (not presently owned by it) in said area by condemnation is in the interest of the City and the health and welfare of its residents and effectuate the purposes of Subdivision 2 of Section 72-k of the General Municipal Law, and

WHEREAS, following the acquisition of said property by the City, it is intended by the Board of Estimate that said property shall be sold at public auction for redevelopment in accordance with the

277

provision of the said Section 72-k of the General Municipal Law as amended, and

WHEREAS, The Committee on Slum Clearance has caused to be prepared and has transmitted to the Board of Estimate an Acquisition Map entitled "Acquisition Map Showing Real Property to be Acquired for Lincoln Square Slum Clearance Project within the area bounded by West 60th Street, Amsterdam Avenue, West 66th Street, Lands of New York Central Railroad, West 70th Street, Amsterdam Avenue, West 66th Street and Columbus Avenue, excluding all streets, Borough of Manhattan, dated August 12, 1957 prepared by Earl B. Lovell-S. P. Belcher, Inc., and

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WHEREAS, The Committee on Slum Clearance has caused to be prepared and has transmitted to the Board of Estimate the proposed terms and conditions upon which said public auction shall be had;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Estimate:

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1. That the Acquisition Map entitled "Acquisition Map Showing Real Property To Be Acquired For Lincoln Square Slum Clearance Project Within The Area Bounded by West 60th Street, Amsterdam Avenue, West 66th Street, Lands of New York Central Railroad, West 70th Street, Amsterdam Avenue, West 66th Street and Columbus Avenue, excluding all streets, Borough of Manhattan," dated August 12, 1957 prepared by Earl B. Lovell-S. P. Belcher, Inc. be and the same is hereby approved.

280 *Exhibit H*

2. That the Corporation Counsel be and he hereby is authorized and directed to institute condemnation proceedings for the acquisition of all the real property hereinafter described by making application to the Supreme Court of the State of New York to have the compensation, which should be made to the owners of, or to the persons interested in such property to be so acquired, ascertained and determined by the Court, without a jury, as provided by Title B of Chapter 15 of the Administrative Code. The nature and extent of
281 the improvements hereby intended is the acquisition of title in fee simple absolute by The City of New York of all the real property in the area necessary to be acquired for the Slum Clearance Project, including the acquisition of the fee in public streets where not already owned by the City for street purposes to:

All those certain tracts of land, together with the buildings and improvements erected thereon, and the appurtenances thereunto belonging, situated in the Borough of Manhattan, County of New York, City and State of New York, bounded and
282 described as follows:

Bearings which appear in the following descriptions refer to the Borough Survey of the Borough President's Office, Manhattan.

AREA #1

BEGINNING at the corner formed by the intersection of the westerly line of Columbus Avenue with the northerly line of West 60th Street; running thence westward along the northerly line of West 60th Street a distance of 800 feet to its intersection with the easterly line of Amsterdam Avenue;

Exhibit H

283

thence northward along the easterly line of Amsterdam Avenue, crossing West 61st Street a distance of 260 feet 10 inches to the northeasterly corner of said street and avenue; thence eastward along the northerly line of West 61st Street a distance of 250 feet; thence northward parallel with the easterly line of Amsterdam Avenue a distance of 100 feet 5 inches; thence westward parallel with the northerly line of West 61st Street a distance of 250 feet to a point in the easterly line of Amsterdam Avenue; thence northward along the easterly line of Amsterdam Avenue a distance of 100 feet 5 inches to its intersection with the southerly line of West 62nd Street; thence eastward along the southerly line of West 62nd Street a distance of 800 feet to its intersection with the westerly line of Columbus Avenue; thence southward along the westerly line of Columbus Avenue crossing West 61st Street a distance of 461 feet 8 inches to the point or place of Beginning. The area contained within the lines described above is 344, 230 square feet.

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Area #2

Beginning at the corner formed by the intersection of the westerly line of Columbus Avenue with the northerly line of West 62nd Street; running thence westward along the northerly line of West 62nd Street a distance of 800 feet to its intersection with the easterly line of Amsterdam Avenue; thence northward along the easterly line of Amsterdam Avenue, crossing West 63rd Street and West 64th Streets a distance of 722 feet 6 inches to its intersection with the southerly line of West 65th Street; thence eastward along the southerly

line of West 65th Street a distance of 724 feet 9⅛ inches to its intersection with the westerly line of Broadway; thence southeastward along the westerly line of Broadway a distance of 149 feet 8¼ inches to its intersection with the westerly line of Columbus Avenue; thence southward along the westerly line of Columbus Avenue, crossing West 64th and West 63rd Streets a distance of 593 feet 1⅜ inches to the point or place of BEGINNING. The area contained within the lines described above is
287 573,133 square feet.

AREA #3

BEGINNING at a point in the southerly line of West 66th Street distant 325 feet east of the corner formed by its intersection with the easterly line of Amsterdam Avenue; running thence eastward, along the southerly line of West 66th Street a distance of 25 feet; thence southward, parallel with the easterly line of Amsterdam Avenue, a distance of 100 feet 5 inches; thence westward, parallel with the southerly line of West 66th Street
288 a distance of 25 feet; thence northward, parallel with the easterly line of Amsterdam Avenue, a distance of 100 feet 5 inches to the point or place of BEGINNING. The area contained within the lines described above is 2,510 square feet.

AREA #3-A

BEGINNING at the corner formed by the intersection of the easterly line of Amsterdam Avenue with the southerly line of West 66th Street; running thence eastward along the southerly line of West 66th Street a distance of 122 feet; thence

289

southward paraliel with the easterly line of Amsterdam Avenue a distance of 100 feet 5 inches; thence westward parallel with the southerly line of West 66th Street a distance of 122 feet to a point in the easterly line of Amsterdam Avenue; thence northward along the easterly line of Amsterdam Avenue a distance of 100 feet 5 inches to the point or place of BEGINNING. The area contained within the lines described above is 12,251 square feet.

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AREA #3-B

BEGINNING at a point in the southerly line of West 66th Street distant 198 feet east of the corner formed by its intersection with the easterly line of Amsterdam Avenue; running thence eastward along the southerly line of West 66th Street a distance of 27 feet; thence southward parallel with the easterly line of Amsterdam Avenue a distance of 100 feet 5 inches; thence westward parallel with the southerly line of West 66th Street a distance of 27 feet; thence northward parallel with the easterly line of Amsterdam Avenue a distance of 100 feet 5 inches to the point or place of BEGINNING. The area contained within the lines described above is 2,711 square feet.

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AREA #4

BEGINNING at the corner formed by the intersection of the westerly line of Amsterdam Avenue with the northerly line of West 66th Street; running thence westward along the northerly line of West 66th Street a distance of 800 feet to its intersection with the easterly line of West End Avenue; thence northward along the easterly

line of West End Avenue, crossing West 67th, West 68th and West 69th Streets a distance of 983 feet 4 inches to its intersection with the southerly line of West 70th Street; thence eastward along the southerly line of West 70th Street a distance of 525 feet; thence southward parallel with the westerly line of Amsterdam Avenue a distance of 100 feet 5 inches; thence eastward parallel with the southerly line of West 70th Street a distance of 275 feet to a point in the
293 westerly line of Amsterdam Avenue; thence southward along the westerly line of Amsterdam Avenue, crossing West 69th Street, a distance of 185 feet 5 inches; thence westward, parallel with the southerly line of West 69th Street a distance of 80 feet; thence southward, parallel with the westerly line of Amsterdam Avenue, a distance of 50 feet; thence eastward parallel with the southerly line of West 68th Street, a distance of 80 feet to a point in the westerly line of Amsterdam Avenue; thence southward, along the westerly line of Amsterdam Avenue, crossing West 68th and West 67th Streets, a distance of
294 647 feet 6 inches to the point or place of BEGINNING. The area contained within the lines described above is 755,053 square feet.

AREA #5

BEGINNING at the corner formed by the intersection of the northerly line of West 66th Street with the westerly line of West End Avenue; running thence northward along the westerly line of West End Avenue, crossing West 67th, West 68th and West 69th Streets, a distance of 983 feet 4 inches to its intersection with the southerly line of West 70th Street; thence west-

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ward along the southerly line of West 70th Street a distance of 512 feet 10¼ inches to lands of the New York Central Railroad Company; thence southward along the easterly line of lands of the New York Central Railroad Company, on a line forming an interior angle of 80° 59′ 07.02″, crossing West 69th, West 68th and West 67th Streets, a distance of 869 feet 10⅞ inches to a point of curvature; thence still southward, and along the lands of the New York Central Railroad Company, deflecting to the left on the arc of a circle having a radius of 4,967 feet a distance of 125 feet 11⅞ inches to its intersection with the northerly line of West 66th Street; thence eastward along the northerly line of West 66th Street a distance of 355 feet 2¾ inches to the point or place of BEGINNING. The area contained within the lines described above is 427,535 square feet, and be it further

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RESOLVED, That as authorized by Section B15-36.0 of the Administrative Code the title to the said property shall vest in The City of New York upon the entry of the court order granting the application to condemn; and be it further

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RESOLVED, that the Comptroller be and he hereby is authorized to pay the awards for the property described above and to be so acquired, together with interest thereon, and all bills of costs or other charges.

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Exhibit I, Annexed to Answer

#1-E2 11/26/57

WHEREAS, following public hearings, the City Planning Commission has found that substandard conditions and insanitary housing conditions exist in the Lincoln Square Area and has further found that the acquisition by the City of real property comprising the area is necessary for the clearance, replanning, reconstruction and neighborhood rehabilitation of real property in a sub-
299 standard and insanitary area and has consented thereto under the provisions of Subdivision 2 of Section 72-k of the General Municipal Law, as amended, and has transmitted such findings and consent to the Board of Estimate, and

WHEREAS, the Board of Estimate has held a public hearing with respect to such project and acquisition, be it:

RESOLVED, by the Board of Estimate, that the acquisition by the City of all real property (not presently owned by it) in the Project Area by
300 purchase or condemnation and sale at public auction as provided in the contract with the Federal Government is in the interest of the City, and the health and welfare of its residents and effectuate the purposes of Subdivision 2 of Section 72-k of the General Municipal Law.

301

Exhibit J, Annexed to Answer

#1F 11/26/57

Resolved that the Director of the Bureau of Real Estate of the Board of Estimate be and he hereby is authorized and directed upon the acquisition and vesting of title to the real property required for the Lincoln Square Urban Renewal Project, to sell the real property in five parcels, excluding therefrom streets, at public auction, in accordance with the terms and conditions attached to the redevelopment contract to be entered into 302
between the City and Fordham University, as sponsor of the Collegiate Site, Lincoln Center for the Performing Arts, Inc., as sponsor of the Performing Arts Site, The American National Red Cross, as sponsor of the Institutional Site, Webb & Knapp Lincoln Square Housing Corporation, as sponsor of the Housing Site.

303

304

Exhibit K, Annexed to Answer

#1-H 11-26-57

WHEREAS, the Board of Estimate on November 26, 1957 (Calendar No. 1-B) approved the Urban Renewal plan for the Lincoln Square area, as an urban renewal project under Title I of the Housing Act of 1949, as amended; and

WHEREAS, the Committee on Slum Clearance has submitted a proposed contract between the
305 City and Fordham University, in connection with said project; and

WHEREAS, the Board of Estimate held public hearings on said project on the 24th and 25th days of October, 1957; and

WHEREAS, the Board of Estimate has considered and reviewed the proposed contract between the City and Fordham University; and

NOW THEREFORE, BE IT RESOLVED, by the Board of Estimate, as follows:

306

That the proposed contract between the City of New York and Fordham University, relating to the Lincoln Square Urban Renewal project to be redeveloped pursuant to the provisions of 72-k of the General Municipal Law, is hereby approved and the Mayor or Deputy Mayor is hereby authorized and directed to execute the same, when approved as to form by the Corporation Counsel, and the Acting City Clerk is hereby directed to attest the same and affix the seal of the City.

307

Answer of Defendant-Intervenor Fordham University

SUPREME COURT OF THE STATE OF NEW YORK

County of New York

[Same Title]

Defendant-intervenor Fordham University answers the complaint herein as follows: 308

1. It denies it has any knowledge or information sufficient to form a belief as to the allegations contained in paragraph First thereof.

2. As to the allegations contained in the second sentence of paragraph Fifth, it denies it has any knowledge or information sufficient to form a belief as to the approximate amounts to be borne respectively by the Federal Government and the City of New York, and it respectfully refers this Court to the provisions of Title I of the Federal Housing Act of 1949, as amended, 42 U. S. C., section 1451, *et seq.* for the statutory provisions determining the respective amounts to be borne by the Federal and City governments. 309

3. It denies each and every allegation contained in paragraph Sixth thereof except that the Lincoln Square Urban Renewal Project Plan contains a provision for the allocation of a site of approximately 320,230 square feet, comprising substantially the area bounded by Amsterdam and Columbus Avenues and West 60th and West

62nd Streets, for collegiate uses; a provision for a site to be used for a Performing Arts Center; and a provision for a housing site. The said Plan is annexed hereto and made a part hereof as Exhibit "A", and defendant respectfully refers this Court thereto for the exact and complete terms of said Plan.

4. It denies each and every allegation contained in paragraph Seventh thereof, except that
311 it admits that each person willing to undertake redevelopment of a site within the Project Area er rs into a sponsorship agreement with the City of New York pursuant to which such sponsor agrees to bid a minimum price at public auction for the particular site to be redeveloped, that if it is the successful bidder at said public auction it further agrees to use the site for the purposes set forth in the Project Plan, and the City of New York agrees to acquire the site by condemnation or otherwise, to sell the site at public auction and to convey the site to the sponsor if said spon-
312 sor is the successful bidder at the auction; and that said sponsorship agreements may be executed only after the Board of Estimate has approved the Project Plan and authorized the execution of sponsorship agreements.

5. It denies each and every allegation contained in paragraph Eighth thereof, except that it admits, upon information and belief, that the Committee on Slum Clearance is of the opinion that the obtaining of tentative sponsors for redevelopment of the Project Area is the most feasible method of effectuating the Project Plan.

6. It denies each and every allegation contained in paragraphs Tenth and Eleventh thereof, except that it admits that defendant Moses received an offer from Fordham University to become the sponsor of the collegiate site and to bid at the public auction thereof, after its acquisition by the City of New York, at a minimum price which was first fixed at $5 per square foot, then raised to $6.75 per square foot, and was finally fixed at $7 per square foot, and that said offer was conditionally approved by defendant Moses subject to 314
final approval of the Board of Estimate of the City of New York.

7. It denies each and every allegation contained in paragraph Twelfth thereof except it admits that Fordham University is an educational corporation incorporated by Special Act of the Legislature of the State of New York (Chapter 61 Laws of 1846, a copy of which is hereto annexed and made a part hereof as Exhibit "B") that said University is conducted by members of the Society of Jesus, a religious order of the Roman 315
Catholic Church; that enrollment therein is not limited to the students of the Catholic faith; and that courses in the Catholic religion are conducted in certain of its schools.

8. As to paragraph Thirteenth thereof it denies that it has any knowledge or information sufficient to form a belief as to the allegations that no educational institution other than Fordham submitted a bid for the collegiate site; that there is no institution which presently intends and has funds available to purchase 320,230 square

316 feet in the Borough of Manhattan, at a price of $7 per square foot for the use required by the Project Plan; and it denies that if the collegiate site is acquired by the City of New York and sold at public auction in accordance with the Plan, Fordham University is the only possible bidder and the defendant City of New York will be obligated to sell the collegiate site to Fordham University pursuant to the sponsorship agreement.

317 9. It denies it has any knowledge or information sufficient to form a belief as to the allegations contained in paragraph Fourteenth thereof.

10. It denies each and every allegation contained in paragraphs Fifteenth, Eighteenth, Nineteenth and Twentieth thereof.

11. It denies each and every allegation contained in paragraph Sixteenth thereof, except that it admits that after submission of the Project Plan by the Committee on Slum Clearance to the
318 City Planning Commission and after public hearings held on September 11, 1957 at which certain persons objected to said Project Plan on various grounds as shown by the minutes of the said hearing, the City Planning Commission approved the Project Plan in a report dated October 2, 1957.

12. It denies each and every allegation contained in paragraph Seventeenth thereof, except that it admits that after public hearings on October 25, 1957 at which certain persons objected to said Project Plan on various grounds, the Board of Estimate, on November 26, 1957, adopted a

319

series of resolutions approving the Project Plan and some of the sponsorship agreements, including that of Fordham University, a copy of which is hereto annexed and made a part hereof as Exhibit "C".

13. It denies it has any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs Twenty-first and Twenty-second thereof.

320

14. As to paragraphs Twenty-third and Twenty-fifth thereof, defendant-intervenor repeats and reallieges each and every denial hereinabove set forth pertinent thereto.

15. It denies each and every allegation contained in paragraphs Twenty-seventh and Twenty-eighth thereof.

FOR A FIRST SEPARATE DEFENSE TO THE CAUSES OF ACTION ALLEGED IN THE COMPLAINT DEFENDANT-INTERVENOR ALLEGES:

321

16. Plaintiffs' contention that defendant-intervenor Fordham University should be barred as a matter of law from bidding at public auction or participating in slum clearance projects upon the same terms as other persons, firms and corporations, if adopted as law would deprive defendant-intervenor of the equal protection of the laws, contrary to Article I, Section 11 of the Constitution of the State of New York and the Fourteenth Amendment to the Constitution of the United

322 *Answer of Defendant-Intervenor Fordham University*

States, and would constitute a restriction upon the free exercise of religion, contrary to Article I, Section 3 of the Constitution of the State of New York and the First and Fourteenth Amendments to the Constitution of the United States.

WHEREFORE, defendant-intervenor Fordham University demands judgment dismissing the complaint, with costs.

323

SAXE, BACON & O'SHEA,
Attorneys for defendant-intervenor
Fordham University,
20 Exchange Place,
New York 5, N. Y.

(Verified.)

Exhibit A, Annexed to Answer of Fordham University

324

URBAN RENEWAL PLAN

(Omitted by stipulation)

325

Exhibit B, Annexed to Answer of Defendant-Intervenor Fordham University

CHARTER — FORDHAM UNIVERSITY

AN ACT *to incorporate St. John's College, Fordham.*

Passed April 10, 1846 by a two-third vote.
(Laws of New York, 1846, Chap. 61.)

The People of the State of New York, represented in Senate and Assembly do enact as follows: 326

1. Jacob Harvey, Peter A. Hargous, John McKeon, James R. Bayley, John Harley, John McCloskey, William Starrs, Hugh Kelly and David Bacon and their successors, are hereby constituted a body corporate, by the name of St. John's College, Fordham, the said corporation to be in all respects an university, and its object the promotion of education. The said corporation shall have perpetual succession, with power to sue and be sued, to make and use a common 327 seal, and alter the same at pleasure.

2. The persons named are hereby appointed trustees of the said corporation, of whom six members shall constitute a quorum for the transaction of business.

3. The said board of trustees shall appoint the professors and such other instructors as they may deem necessary, subject to removal by vote of the members of the board.

328 *Exhibit B*

4. The corporation hereby created shall possess the powers and be subject to the provisions contained in Article Second, title first, of the fifteenth chapter of the first part of the Revised Statutes so far as the same are applicable.

5. The said corporation may grant to students under its charge, diplomas or honorary testimonials, in such form as it may designate. It may also confer such literary honors, degrees and
329 diplomas, as are usually granted by any university, college or seminary of learning in the United States.

6. Diplomas granted by the said corporation shall entitle the possessor to the immunities and privileges allowed by usage or Statute to the possessors of like diplomas from any college or seminary of learning in the State.

7. The corporation shall be subject to the visitation of the Regents of the University of this State, in the same manner and to the same
330 extent as the various colleges in this State.

8. The corporation hereby created shall possess the powers and be subject to the provisions contained in the third title of the eighteenth chapter of the first part of the Revised Statutes so far as the same are applicable and have not been repealed.

9. The legislature may at any time alter or repeal this act.

10. This act shall take effect immediately.

Exhibit B 331

STATE OF NEW YORK. In Assembly March 17, 1846. This bill having been read the third time, and two-thirds of all the members elected to the Assembly voting in favor thereof, Resolved that the bill do pass. By order of the Assembly.

WM. C. CRAIN, *Speaker*

STATE OF NEW YORK. In Senate April 8, 1846. This bill having been read the third time, two-thirds of all the members elected to the Senate voting in favor thereof, Resolved that the bill do 332
pass. By order of the Senate.

A. GARDINER, *President*

Approved this 10th day of April, 1846.

SILAS WRIGHT

STATE OF NEW YORK
Secretary's Office

I have compared the preceding with an original law of this State on file in this office, and do hereby 333
certify that the same is a correct transcript therefrom and of the whole of said original.

In testimony whereof I have hereunto affixed the Seal of this office at the City of Albany the tenth day of April in the year of our Lord one thousand eight hundred and forty six.

(SEAL)

N. J. BENTON,
Secretary of State

334 *Exhibit B*

THE UNIVERSITY OF THE STATE OF NEW YORK

AMENDMENT *to Charter of St. John's College, Fordham*

Having received a petition made in conformity to law and being satisfied that public interests will be prompted by such action, the Regents, by virtue of the authority conferred on them, hereby amend the charter of St. John's College, Fordham, by changing its corporate name to

335 FORDHAM UNIVERSITY

And giving to its medical department the name of FORDHAM UNIVERSITY, SCHOOL OF MEDICINE; to its law department the name of FORDHAM UNIVERSITY, SCHOOL OF LAW; and to its collegiate department the name of FORDHAM UNIVERSITY, ST. JOHN'S COLLEGE.

In witness whereof, the Regents grant this amendment to charter no. 1808, under seal of the University, at the Capitol in Albany, March
336 7, 1907.

ST. CLAIR MCKELWAY,
Vice-Chancellor

A. S. DRAPER,
Commissioner of Education
Recorded and took effect 2:30 p. m.,
March 7, 1907.

Exhibit B 337

THE UNIVERSITY OF THE STATE OF NEW YORK
AMENDMENT *to Charter of Fordham University*

THIS INSTRUMENT WITNESSETH: That the Regents of the State of New York have amended the charter of Fordham University, located in the Borough of the Bronx, City of New York (which was chartered under the name of St. John's College, Fordham, by Chapter 61 of the Laws of 1846 of the State of New York, its corporate name having been changed to Fordham University by action of the Regents taken at their 338
meeting of March 7, 1907), by changing the name of its collegiate department now known as "Fordham University, St. John's College," to "FORDHAM UNIVERSITY, FORDHAM COLLEGE."

GRANTED November 19, 1931 by the Regents of the State of New York, executed under their seal and recorded in their office. Number 4057.

(SEAL) FRANK PIERREPONT GRAVES, 339
President of the University and Commissioner of Education

J. M. BYRNE,
Vice-Chancellor

340 *Exhibit B*

THE UNIVERSITY OF THE STATE OF NEW YORK
EDUCATION DEPARTMENT

AMENDMENT *to Charter of Fordham University*

THIS INSTRUMENT WITNESSETH That the Board of Regents for and on behalf of the Education Department of the State of New York has amended the charter of Fordham University—which was incorporated under the name of St. John's College, Fordham, by Chapter 61 of the Laws of
341 1846 of the State of New York, such charter having been amended by action of the Board of Regents on March 7, 1907, by changing the corporate name of the institution to

FORDHAM UNIVERSITY

And giving to its medical department the name of FORDHAM UNIVERSITY, SCHOOL OF MEDICINE, to its law department, the name of FORDHAM UNIVERSITY, SCHOOL OF LAW, and to its collegiate department, the name of FORDHAM UNIVERSITY, ST. JOHN'S COLLEGE, and further amended by the
342 Regents on November 19, 1931, by changing the name of the collegiate department from FORDHAM UNIVERSITY, ST. JOHN'S COLLEGE, to FORDHAM UNIVERSITY, FORDHAM COLLEGE—by specifying the principal location of the corporation as the city and State of New York and by authorizing the

Exhibit B 343

corporation to conduct institutional branches in the counties of Westchester, Dutchess and Putnam.

GRANTED December 16, 1955 by the Board of Regents for and on behalf of the State Education Department, executed under the seal of said Department and recorded therein. Number 6814.

(SEAL) JAMES E. ALLEN, JR., 344
President of the University and Commissioner of Education

JNO. P. MYERS,
Chancellor

Exhibit C. Annexed to Answer of Fordham University

Proposed Sponsorship Agreement between City of New York and Fordham University. 345

(Omitted by stipulation)

346

Answer of Defendant-Intervenor Lincoln Center for the Performing Arts, Inc.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

347 Lincoln Center for the Performing Arts, Inc., defendant-intervenor, by its attorneys, Milbank, Tweed, Hope & Hadley, for answer to the complaint:

1. Denies that it has any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph First.

2. Denies each and every allegation contained in paragraph Third, except refers to the provisions of § 72-k of the General Municipal Law and Title I of the Federal Housing Act of 1949,
348 as amended, 49 U. S. C. § 1451, *et seq.* for the terms and effect thereof.

3. Denies each and every allegation contained in paragraphs Fifth and Sixth, except that for the terms and effect of the Plan of the Lincoln Square Urban Renewal Project it refers to the Plan as set forth in Exhibit A to the answer of defendants City of New York, et al., and except that for the terms and effect of the statutory provisions above mentioned it refers to the same.

Answer of Defendant-Intervenor Lincoln Center for the Performing Arts, Inc. 349

4. Denies each and every allegation contained in paragraph Seventh, except that for the terms and effect of the Plan it refers to the Plan as set forth in Exhibit A to the answer of defendants City of New York, et al., and except it admits on information and belief that each person willing to undertake redevelopment of a site within the Project area enters into a sponsorship agreement with the City of New York pursuant to which such sponsor agrees to bid a minimum price at public 350
auction for the particular site to be redeveloped, that if it is the successful bidder at said public auction it further agrees to use the site for the purposes set forth in the Project Plan, and the City of New York agrees to acquire the site by condemnation or otherwise, to sell the site at public auction and to convey the site to the sponsor if said sponsor is the successful bidder at the auction; and that said sponsorship agreements may be executed only after the Board of Estimate has approved the Project Plan and authorized the execution of sponsorship agreements. 351

5. On information and belief, denies each and every allegation contained in paragraph Eighth, except admits upon information and belief that the Committee on Slum Clearance is of the opinion that the obtaining of tentative sponsors for redevelopment of the Project area is the most feasible method of effectuating the Project Plan.

6. Denies that it has any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs Tenth and Eleventh, except on information and

352 *Answer of Defendant-Intervenor Lincoln Center for the Performing Arts, Inc.*

belief admits that defendant Moses received an offer from Fordham University to become the sponsor of the collegiate site and to bid at the public auction thereof after acquisition by the City of New York at a minimum price finally fixed at $7.00 per square foot, and that said offer was conditionally approved by defendant Moses subject to final approval by the Board of Estimate of the City of New York.

353 7. Denies each and every allegation contained in paragraph Twelfth, except on information and belief admits that Fordham University is an educational corporation conducted by a religious order of the Roman Catholic Church, that enrollment therein is not limited to students of the Catholic faith, and that courses in the Catholic religion are conducted in certain of its schools.

8. Denies that it has any knowledge or information sufficient to form a belief as to each and every
354 allegation contained in paragraph Thirteenth, except admits on information and belief that defendant Moses has announced advertisement of the solicitation of sponsorship bids for the sites in the Project area, and except on information and belief denies that if the collegiate site is acquired by the City of New York and sold at public auction in accordance with the Plan, Fordham University is the only possible bidder and the City of New York will be obligated to sell the collegiate site to Fordham University pursuant to the sponsorship agreement.

Answer of Defendant-Intervenor Lincoln Center for the Performing Arts, Inc. 355

9. Denies that it has any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph Fourteenth.

10. Denies each and every allegation contained in paragraph Fifteenth.

11. Denies each and every allegation contained in paragraph sixteenth, except admits that after submission of the Project Plan by the Committee 356
on Slum Clearance to the City Planning Commission and after public hearing held on September 11, 1957, at which certain persons objected to said Project Plan on various grounds as shown by the minutes of the said hearing, the City Planning Commission approved the Project Plan in a report dated October 2, 1957.

12. Denies each and every allegation contained in paragraph Seventeenth, except admits that after public hearings on October 25, 1957, at which 357
certain persons objected to said Project Plan on various grounds the Board of Estimate on November 26, 1957, adopted a series of resolutions approving the Project Plan and some of the sponsorship agreements, including that of Fordham University.

13. Denies each and every allegation contained in paragraphs Eighteenth, Nineteenth and Twentieth.

14. Denies that it has any knowledge or information sufficient to form a belief as to each and

358 *Answer of Defendant-Intervenor Lincoln Center for the Performing Arts, Inc.*

every allegation contained in paragraphs Twenty-first, Twenty-second and Twenty-fourth, except admits that the collegiate site includes 101 West 60th Street.

15. As to paragraphs Twenty-third and Twenty-fifth, repeats and realleges each and every denial hereinabove set forth pertinent thereto.

359 16. Denies each and every allegation contained in paragraphs Twenty-seventh and Twenty-eighth.

Wherefore, defendant-intervenor Lincoln Center for the Performing Arts, Inc. demands judgment dismissing the complaint, with costs.

Milbank, Tweed, Hope & Hadley,
15 Broad Street,
New York 5, N. Y.,
Attorneys for defendant-
360 intervenor Lincoln Center,
for the Performing Arts, Inc.

(Verified, December 12, 1957.)

361

Defendants' Notice of Motion

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

Sir:

PLEASE TAKE NOTICE, that upon the complaint, the answer, the affidavit of Robert Moses, duly sworn 362
to the 9th day of December, 1957, the affidavit of Robert Moses, duly sworn to the 4th day of December, 1957 heretofore submitted to this Court in opposition to plaintiffs' motion for a temporary injunction, and upon all the proceedings heretofore had herein, the undersigned will move before Special Term, Part III of this Court, to be held at the Courthouse thereof, located at 60 Centre Street, in the Borough of Manhattan, City of New York, on the 13th day of December, 1957, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order 363
and judgment pursuant to Rules 106, subd. 4, 112 and 113 of the Rules of Civil Practice (a) dismissing the complaint on the ground that it is insufficient in law and does not state facts sufficient to constitute a cause of action; (b) on the pleadings; (c) dismissing the complaint and granting summary judgment in favor of the defendants and (d) granting the defendants such other and fur-

364 *Defendants' Notice of Motion*

ther relief as may to the Court seem just and proper.

Dated: New York, December 9, 1957.

Yours, etc.,

PETER CAMPBELL BROWN,
Corporation Counsel,
Attorney for Defendants,
Office & P. O. Address,
365 Municipal Building,
New York 7, N. Y.

To:

HARRIS L. PRESENT, ESQ.,
Attorney for Plaintiffs,
1270 Sixth Avenue,
New York 20, N. Y.

366

367

Affidavit of Robert Moses, Read in Support of Defendants' and Defendants-Intervenors' Motions and in Opposition to Plaintiffs' Motions

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

368

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ROBERT MOSES, being duly sworn, deposes and says:

1. This affidavit is submitted in support of the defendants' motion for summary judgment dismissing the complaint. The purpose of this affidavit is to set forth the facts established by documentary evidence or official records which demonstrate that the defense herein is sufficient as matter of law, that there are no material or relevant issues of fact raised by the pleadings, and that summary judgment should be granted to the defendants dismissing the complaint.

369

2. In opposition to the plaintiffs' motion for a temporary injunction, an affidavit sworn to by me on the 4th day of December 1957 was submitted to the Court by the defendants. That affidavit is made part hereof as though fully set forth at length and I ask the Court to deem it as having been made both in support of defendants' instant

370 *Affidavit of Robert Moses*

motion for summary judgment and in opposition to the plaintiffs' motion for temporary injunction.

3. My first affidavit set forth at length the facts which in my opinion conclusively demonstrate:

(a) that schools, including schools of a denominational character, are a natural and frequently indispensable component of a planned community and, as such, cannot possibly have been intended to be excluded by the New York or Federal Con-
371 stitutions from a plan for community redevelopment which is part of a slum clearance and redevelopment; and

(b) that the procedures required by General Municipal Law, Section 72k, and the National Housing Act of 1949, as amended, as well as those which had been worked out by the Slum Clearance Committee for the processing and execution of slum clearance and redevelopment programs assure that no aid or gifts of property or public funds are made to any of the successful bidders for the land to be redeveloped under the program.

372

ANALYSIS OF PLAINTIFFS' CONTENTIONS

(A)

4. The whole tenor of this action, as illustrated by the complaint and the affidavit of Mr. Dickstein submitted in support of the application for temporary injunction, appears to be that the Urban Renewal plan can only be upheld if Fordham University is affirmatively excluded from bidding at public auction equally with non-sectarian bidders. Mr. Dickstein concedes that if the defendants had

negotiated a sponsorship contract with Columbia University or some other nonsectarian educational institution there would be no constitutional objections to the Urban Renewal Plan and the acquisition of the site by condemnation. Let us follow this concession to its logical conclusion and see where it leads us. We would then have a Lincoln Square Renewal Project Plan and, among other things, a sponsorship agreement with Columbia University to bid at the public auction. The Board of Estimate would then approve the Plan, author- 374
ize condemnation of the site, and order the sale of the property at public auction after its acquisition. This, Mr. Dickstein concedes, would be constitutionally unassailable. If, at the public auction, New York University appeared for the first time and outbid Columbia University, it would follow from Mr. Dickstein's concession that sale of the property to New York University instead of Columbia would be constitutionally unobjectionable. But, says Mr. Dickstein for the plaintiffs herein, if Fordham University under this assumed state of facts were to appear for 375
the first time at the public sale and were to outbid Columbia University and New York University, we would have to reject the highest bid from Fordham University to avoid violating the Federal and State Constitutions. As a matter of fact, to point up the complete absurdity of the contentions made by the plaintiffs herein, we would have to reject Fordham for fear that the whole plan, the sponsorship contracts and the act of condemnation would all be invalidated.

5. Furthermore, if the contentions raised by the plaintiffs herein were found to be correct, no

376 municipality throughout the land could safely undertake the rehabilitation of a slum clearance project. Elsewhere, outside the City of New York, such projects are carried forward by the municipality acquiring the land, relocating its occupants, demolishing the buildings thereon and then, for the first time, seeking persons willing to redevelop in accordance with their project plan. (This practice is illustrated by the fact situations in many of the judicial decisions of other jurisdictions cited
377 in the legal memorandum of the Corporation Counsel.) Not until the moment of the receipt of the highest bid could any municipality know whether or not the plan on which it had worked was or was not constitutional.

6. Quite apart from the demonstration of the fallacy of the plaintiffs' contentions, there remain to be considered by this Court the principles laid down by the Court of Appeals and the Supreme Court clearly establishing that the right to the free exercise of religion is a constitutional right as important to our nation as that which prevents
378 governmental aid in establishment of religion. Whenever it is contended that a certain State act is in aid of the establishment of religion, the Court must be satisfied that the striking down of the proposed act will not destroy the right to the free exercise of religion. I am firmly convinced that the plaintiffs' success would deprive Fordham University or any other sectarian institution which might appear at the public auction of its right to compete on an equal footing with nonsectarian institutions and that such deprivation would be an impairment of the constitutional guarantee of the free exercise of religion.

(B)

7. Among other things, it is contended in the affidavit of Mr. Dickstein (p. 11) that "substantial benefit has been conferred upon Fordham merely by reason of the re-use restriction, for if it were not for such restriction, Fordham would necessarily be competing with other purchasers who might desire to acquire the site for housing or some other purpose."

8. This contention overlooks the fact that under Constitution Article 18, and General Municipal Law § 72-K, it is the duty of the Board of Estimate to provide for neighborhood replanning in connection with a slum clearance project. If the plaintiffs' suggestion—that the property should, after acquisition, be sold to the highest bidder for the use which brings the City the highest price—were to be followed, it would violate the constitutional and statutory purpose that recurrence of the slum conditions should be averted by a proper redevelopment plan. 380

The determination to clear an area of its slum conditions and the determination of the nature of the uses for which it is to be redeveloped are matters within the legislative discretion of the Board of Estimate of the City of New York. So long as the requirements of Section 72-k of the General Municipal Law are followed, no one may be heard to question the manner in which it is finally determined that the site shall be redeveloped. 381

9. I have been informed by the Corporation Counsel that the memorandum which was submitted on behalf of the defendants in opposition to

the application for temporary injunction herein contains the cases in this and in other jurisdictions which establish beyond question the validity of the resale of property acquired in furtherance of a slum clearance project to redevelopers under terms and conditions which insure the development of the property in accordance with the plan for its rehabilitation. I am informed as well that this Court will be asked to consider that memorandum in connection with the present motion. The cases I refer to will be found at pp. 13 through 20.
383 Among these cases are two upholding redevelopment plans which provide for redevelopment as collegiate sites: *Boro Hall Corp.* v. *Impelliteri*, (Long Island University) and *Bleecker Luncheonette Inc.* v. *Wagner* (New York University), cited at pp. 13-14 of the memorandum of the Corporation Counsel.

10. Where, as here, it has been determined that part of the project area shall be developed for collegiate purposes, it necessarily follows that said portion of the site, when acquired, must be resold
384 at public auction on terms and conditions which will guarantee the effectuation of the plan. Obviously, therefore, land for which the sponsors and others bid at the public auction cannot be considered in the same light as land which is sold without restrictions upon its use imposed by the grantor.

(C)

11. Paragraphs "Tenth" and "Eleventh" of the complaint allege that Fordham University originally agreed to become a sponsor and to bid at

the public auction at a minimum upset price of $5 per square foot, that this bid price was revised several times, and ultimately fixed at $7 per square foot The affidavit of Mr. Dickstein, sworn to November 27, 1957, attempts to amplify the allegations of paragraphs "Tenth" and "Eleventh" of the complaint. For the reasons advanced in my original affidavit of December 4th (p. 27, paragraph 24), to which the Court is respectfully referred, the fact that modifications were made in the minimum upset price to be bid by Fordham 386
under its sponsorship contract has no relevance to the constitutional issues which have here been raised. These appraisals are intended merely: (a) to provide a reasonable estimate on which to base forecasts of Federal and City costs; and (b) to establish a *minimum* upset price for the public auction. The price obtained at such public auction constitutes the fair re-use value of the property under the restrictions upon which it is sold.

12. As set forth in Mr. Dickstein's affidavit (p. 10), the Committee on Slum Clearance approved 387
an offer from Fordham University to become a sponsor upon a minimum upset price of $5 a square foot for collegiate reuse. Such acceptance was, of course, subject to the approval of the Board of Estimate and the Federal Housing and Home Finance Agency. As further indicated in Mr. Dickstein's affidavit (p. 10), the aforesaid approval was based upon the appraisal of the late George A. Hamm̃er showing the value of that portion of the site *restricted to collegiate reuse* to be $4.84 a square foot The records of my office do not contain any appraisal of the collegiate area at

388

$8 a square foot. The sum of $8 a square foot for the proposed collegiate reuse was *not* based upon an appraisal of Mr. Hammer or upon any other appraisal (compare Dickstein's affidavit, p. 10). Instead, it was a recommended disposition price submitted by the Slum Clearance Committee in an interim project report to the Federal agency (See, Exh. A, annexed hereto, which is a true copy of the recommended disposition prices submitted by the Slum Clearance Committee to the Federal Agency on May 24, 1957). Such recommendation 389 of $8 a square foot was not related to the fair collegiate reuse value, but rather, was dictated by the limitations of the Federal and City funds available for financing the project. (See, Exh. B, annexed hereto, which is a true copy of an excerpt from a document on file in my office.) I might add that Fordham University never agreed to be a sponsor at a minimum upset price of $8 a square foot.

13. Thus, it is important to note that the minimum upset price of $7 a square foot for collegiate 390 reuse, finally approved by the Board of Estimate and the Federal Agency and accepted by Fordham University, is higher than every appraised value submitted with respect to the collegiate area. This fact insures that the minimum amount obtained by the City at the public auction will be greater than the fair reuse value estimated by every appraiser. It is also noteworthy that the appraisals of Crawford and Warsawer at $6.71 a square foot and $6.50 a square foot, respectively (Dickstein's affidavit, pp. 10 and 11) were based upon a reuse more valuable than collegiate use, i.e., housing use. Thus, the upset price of $7 which Fordham is pre-

391

pared to bid at public auction is even in excess of the appraised values of the more valuable housing use. Finally, it is appropriate to observe that the foregoing procedures are no different from those applied in earlier Title I proceedings under which educational sites were acquired at public auction by New York University, Pratt Institute and Long Island University.

14. On the basis of the foregoing, I believe that the complaint herein has no merit and must be dismissed. The constitutional provisions which the plaintiffs claim to have been violated cannot possibly be distorted to mean that municipal slum clearance and redevelopment must refuse to recognize the need for denominational schools in a planned community. Such an interpretation would have a disastrous effect on sound community planning and would seriously impede the development of stable and desirable communities. It would also constitute a clear deprivation of the right to the free exercise of religion which is guaranteed by the State and Federal Constitutions.

392

393

Wherefore, it is respectfully requested that defendants' motions be granted and that judgment be entered herein dismissing the complaint.

Robert Moses.

(Sworn to December 9th, 1957.)

394

Exhibit A, Annexed to Affidavit of Robert Moses

LINCOLN SQUARE

RECOMMENDED DISPOSITION PRICES

Area	*Use*	*Sq. Ft.*	*$/Sq. Ft.*	*Sale Price*
1	Collegiate	320,230	8.00	$ 2,561,84
2	(Performing Arts	352,908	8.00	2,823,26
	(64-70 Columbus Avenue	23,854	—	1,500,00
395 3	Lot 51	2,510	7.0	17,57
a.	Fire House	12,251	6.79	83,18
b.	Lot 56	2,711	6.30	17,07
5	Housing	506,384	6.00	3,038,30
a.	Commercial	25,165	6.00	150,99
b.	Church	50,000	6.00	300,00
c.	School	40,000	6.08	243,20
	Playground	59,804	—	—
d.	Commercial	27,200	6.00	163,20
e.	Commercial	20,000	6.00	120,00
6	Housing	280,748	6.00	1,684,48
396 a.	Housing—Cooperative	53,050	4.00	212,20
				$12,915,33

May 24, 1957

397

Exhibit B, Annexed to Affidavit of Robert Moses

CITY OF NEW YORK

OFFICE OF COMMITTEE ON SLUM CLEARANCE

Randall's Island
New York 35, N. Y.

Telephone TRafalgar 6-9700

May 1, 1957

REPORT TO MAYOR WAGNER
FROM COMMISSIONER MOSES 398

You have Mr. Cole's letter to me outlining the agreement which Tom Shanahan, George Spargo, Bill Lebwohl and I reached on Federal funds to enable us to proceed on a constructed, reliable basis with the urban renewal program in New York City. Under this agreement we will receive from the Federal Government an additional $5,500,000 before July 1, 1957, and 10 percent of the Federal authorization made by Congress for the year beginning July 1, 1957. It is expected that this authorization will be in the neighbor- 399
hood of $250,000,000, of which New York City would receive $25,000,000.

The application to specific projects of these funds discussed with Mr. Cole and his associates and which formed the basis of the agreement made with him is as follows:

1. Lincoln Square will be allocated a total of $30,000,000 in Federal grant monies. This will necessitate primarily elimination from the Lincoln Square plan of the section along

400 *Notice of Motion of Defendant-Intervenor Fordham University for Summary Judgment*

Broadway from 65th to 70th Street, originally set aside for theatrical and commercial development. It will necessitate some increase in the price to be paid for the land by sponsors seeking to develop the housing, educational and performing arts activities. This will require about $5,500,000 of the funds to be made available. The specific changes in land prices required in the original plan to
401 keep within this total are an increase from $5 to $8 per foot to be paid by Fordham University and the Performing Arts Center. A prorata reduction in overhead expenses can also be effected.

• • •

/s/ Robert Moses
Chairman

Notice of Motion of Defendant-Intervenor Fordham University for Summary Judgment

402

SUPREME COURT OF THE STATE OF NEW YORK

County of New York

[Same Title]

Sirs:

Take notice that defendant-intervenor Fordham University will move this Court at a Special Term, Part III thereof, to be held in and for the County of New York at the County Court House therein, on December 13, 1957, at 10 A. M., as follows:

Notice of Motion of Defendant-Intervenor Fordham University for Summary Judgment 403

I. For an order granting judgment on the pleadings pursuant to Section 476 of the Civil Practice Act and Rule 112 of the Rules of Civil Practice, dismissing the complaint on the ground that it does not state facts sufficient to constitute a cause of action.

II. Upon the pleadings herein and the affidavit of Laurence J. McGinley, verified December 10, 1957, annexed hereto, for an order granting summary judgment pursuant to Rule 113 of the Rules 404
of Civil Practice dismissing the complaint.

III. For such other and further relief as may be proper.

New York, N. Y.,
December 10, 1957.

Yours, etc.,

SAXE, BACON & O'SHEA,
Attorneys for Defendant-Intervenor, 405
Fordham University,
20 Exchange Place,
New York, 5.

To:

HARRIS L. PRESENT, Esq.,
Attorney for Plaintiffs,
1270 Sixth Avenue,
New York, N. Y.

HON. PETER CAMPBELL BROWN,
Corporation Counsel,
Attorney for Defendants City of
New York, et al.,
Municipal Building,
New York 7, N. Y.

406 **Affidavit of Laurence J. McGinley, Read in Support of Defendants' and Defendants-Intervenors' Motions and in Opposition to Plaintiffs' Motions**

SUPREME COURT OF THE STATE OF NEW YORK

County of New York

[Same Title]

407 State of New York }
County of New York } ss.:

Laurence J. McGinley, being duly sworn, says:

1. I am the President of Fordham University (hereinafter sometimes called "the University"), and have been President since 1939.

I am, at the present time, also President of the Association of Colleges and Universities of the State of New York; Secretary of the Committee on Institutions of Higher Education of the Middle States Association (the regional accrediting Asso-
408 ciation of this area of the United States); a Director of the New York Higher Education Assistance Corporation (a non-profit corporation created in 1957 by the New York State Legislature to improve the higher educational opportunities of New York residents by lending funds to such persons to assist them in meeting their expenses of higher education); and also a member of other educational associations.

2. I make this affidavit in support of the University's motion, made pursuant to Rule 113 of the Rules of Civil Practice, for summary judgment dismissing the complaint.

3. This action was commenced on December 2, 1957. The University was not made a party defendant. By order dated December 9, 1957 the University was permitted to intervene as a party defendant and to serve an answer. The University served a verified answer on that date.

4. By this action plaintiffs seek to have declared null and void, illegal and unauthorized in violation of Article XI Section 4 and Article I, Section 7 of the Constitution of the State of New York and further in violation of the Fourteenth Amendment of the Constitution of the United States, the action of the Board of Estimate of the City of New York taken on November 26, 1957 approving the Lincoln Square Urban Renewal Project Plan, the capital grant contract thereunder, acquisition of the project area by condemnation or otherwise and the sale of the project area in accordance with the Project Plan; and also seek to enjoin the defendant City and its agencies from executing or carrying out the terms of the sponsorship and redevelopment contract with the University and other action to be taken under the Project Plan.

5. The University formally opened in what is now the Borough of the Bronx on June 24, 1841. It was then known as St. John's College. On April 10, 1846, the Legislature of the State of New York by Special Act incorporated the University as an educational corporation (Chapter 61, Laws of 1846, a copy of which is annexed to the University's answer). On March 7, 1907, its name was changed to Fordham University.

412 *Affidavit of Laurence J. McGinley*

6. The University comprises nine colleges and schools. Fordham College of Arts and Sciences, the Graduate School of Arts and Sciences and the College of Philosophy and Letters, are liberal arts institutions. Its professional schools are the School of Law, the College of Pharmacy, the School of Social Service, the School of Education, and the School of Business. The School of General Studies provides for adult education.

The School of Social Service is located at No. 134 East 39th Street, Borough of Manhattan, New
413 York City; and the Schools of Law, Education, Business and General Studies are located at No. 302 Broadway, Borough of Manhattan.

7. The University has more than 800 members on its faculty and administrative staff; and each academic year more than 13,000 students attend its classes.

It is an established fact that, over the years, a steadily increasing percentage of youth has continued education beyond high school. It has been estimated that there were 73,040 high school gradu-
414 ates in the New York City Metropolitan Area in 1956; and that this figure will grow to 132,331 in 1965 (State Education Department Study—"Needs and Facilities in Higher Education in New York State" (pp. 67-8, March 1957). The impact of this increase in high school graduates on the colleges and universities in New York City is obvious.

The Deans of the University and I estimate that over 18,000 students will be attending Fordham's classes in the academic year 1965.

8. For over 115 years Fordham has served the educational needs of the New York Metropolitan area, accepting students of all races, colors and creeds. During its entire existence no applicant has ever been denied an opportunity for a Fordham education because of race, creed, color or national origin.

It is the intention of Fordham to continue that policy and, indeed, if the University is the successful bidder, Section 501 of Article V of the proposed sponsorship contract between the City and Fordham (copy annexed to Fordham's answer herein) provides: 416

> "The Sponsor shall not discriminate against or segregate any person seeking accommodations in any structure in the Collegiate Site because of that person's race, color, religion, national origin or ancestry."

This provision is in accord with the policy and traditions of Fordham and will be strictly observed in the event that Fordham is the successful bidder at the proposed auction sale. Since the 417
University does not maintain a detailed record of the religious affiliations of its students, I am unable to state precisely the number who are affiliated with various particular religious bodies, but I can state of my own knowledge that a substantial number of Fordham students, graduates and faculty, including those of the schools proposed to be located at Lincoln Square, are not of the Catholic faith and that many races, colors, creeds and national origins are represented in those schools.

418

9. More and more the future of our country will depend on educational opportunity for the boys or girls who must live at home while going to school so that they may, at least in part, work their way through. The University is permanently dedicated to serve such youth right here in New York City. More than fifty years ago for the benefit of those who could neither reside on the campus nor travel to it and especially for those who could only attend college on a part-time basis, Fordham located schools in the Borough

419

of Manhattan. At the present time over 4500 young men and women attend these schools, undergraduate and graduate, day and night, Saturdays and during the summers. Location in Manhattan makes it possible to get to school from home and work. All of these schools directly serve the community of the City of New York. For over a half a century the University's School of Law has graduated outstanding students and fed them into the life-stream of New York City. Business firms seek the graduates of the University's School of Business. The School of Edu-

420

cation prepares expert, devoted and direly needed teachers for our New York City school system. The School of Social Service—a school of human welfare—is the third largest of its type in the United States supplying one out of every five professionally trained social workers in the welfare agencies of this City. It is a school where every race, color and creed join together in the conviction that the social adjustment of human lives merits the skill that comes only from thorough training. The School of General Studies offers the opportunity to men and women to fur-

ther the training interrupted in their youth and deepen and enrich the lives which they now lead.

These schools serve our community well. In turn they must be readily accessible to their students—to the law clerk hurrying to class, to the employee taking business courses at night, to the future teacher practicing teaching in the local public school and to the graduate student working at a welfare agency to learn the art as well as the theory of social service.

Without including the adults registered in the School of General Studies, the other downtown schools enroll at the present time some 4569 students. The Deans and myself estimate that by 1965 their annual enrollments will increase to approximately 7000 or an increase of approximately 53%, as follows: 422

	57-8	1965
School of Education	2828	4500
School of Law	696	1000
School of Business	788	1200
School of Social Service	257	300

423

10. If Fordham is the highest bidder at the public auction of the collegiate site, it will be in a position to consolidate these four downtown schools in one location and enlarge and modernize their facilities to better meet and serve the future educational and cultural needs of the youth of our City. The University's participation in the Lincoln Square Urban Renewal Project will enable it—just as in the cases of New York University, Long Island University and Pratt Institute's participation in slum clearance projects—to achieve

these goals and at the same time to contribute to the City's primary and overall purpose in undertaking this project—that of ridding the City of substandard and insanitary areas and assuring against their recurrence.

11. Fordham seeks no grant, aid or maintenance from the City of New York herein nor does it ask to be accorded any special rights or privileges. It merely desires to participate in this Project by contracting with the City on the basis
425 of an exchange of valuable considerations. It never contemplated, intended or in fact is to receive any grant, aid or maintenance from the City or from the Federal Government if it is the successful bidder. It desires to exercise its corporate powers to contract by bidding in at the public auction for the proposed collegiate site as might any other educational institution. I have been advised by counsel, and I believe, that Fordham's participation in the Project is entirely legal and is not in violation of any provision of the Constitution of the State of New York or of the United
426 States.

12. I am also advised by counsel, and I believe, that this action has no merit. No triable issue of fact is presented by the pleadings. All material questions of fact are admitted.

LAURENCE J. MCGINLEY.

(Sworn to December 10, 1957.)

427

Affidavit of Edgar B. Young, Read in Support of Defendants' and Defendants-Intervenors' Motions and in Opposition to Plaintiffs' Motions

SUPREME COURT OF THE STATE OF NEW YORK

County of New York

[Same Title]

428

State of New York }
County of New York } ss.:

Edgar B. Young, being duly sworn, says:

I am Secretary of Lincoln Center for the Performing Arts, Inc., defendant-intervenor herein (hereinafter called "the Center"), and make this affidavit joining in and supporting the motion of defendants City of New York et al. to dismiss the complaint and for other relief, and opposing plaintiffs' cross-motion for summary judgment.

429

The Center is a New York, non-profit, membership corporation having its principal place of business at 10 Columbus Circle, New York, N. Y., formed exclusively for charitable and educational purposes, including the promotion of the musical and performing arts.

The Center has duly entered into a sponsorship contract with the City, copy of which is hereto annexed as Exhibit A, providing in material substance that after condemnation by the City the Center will bid at public auction at least a specified minimum price for a specified site within the Lincoln Square Urban Renewal Project area; that if the Center's is the highest bid the City will ac-

cept it and convey the site to the Center upon payment therefor; and that thereupon the Center in accordance with specified plans will relocate tenants, demolish all structures now on the site, and construct new buildings, including a concert hall to be a home for the New York Philharmonic-Symphony Society and an opera house to be a home for the Metropolitan Opera Association. The contract is subject to approval by the Federal Government and execution and delivery of a Federal capital grant contract pursuant to the provisions of the Federal Housing Act of 1949, as amended, 49 U. S. C. § 1451, *et seq.*

Accordingly, defendant-intervenor Lincoln Center for the Performing Arts, Inc. joins in and supports defendants' aforesaid motion and urges that it be granted and that plaintiffs' cross-motion be denied, all for the reasons set forth in the affidavits of Robert Moses, sworn to December 4 and 9, 1957, submitted herein.

EDGAR B. YOUNG.

(Sworn to December 12, 1957.)

Exhibit A, Annexed to Affidavit of Edgar B. Young

Proposed Sponsorship Agreement between City of New York and Lincoln Center for the Performing Arts, Inc.

(Omitted by stipulation.)

433

Plaintiffs' Cross Notice of Motion for Summary Judgment

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

Sirs: 434

PLEASE TAKE NOTICE that upon the complaint, the answer of defendants, the answer of defendant-intervenor, the affidavit of Sidney Dickstein, duly sworn to the 27th day of November, 1957, heretofore submitted to this Court in support of plaintiffs' motion for a temporary injunction, and upon all the proceedings heretofore had herein, and upon defendants' motion for an order dismissing the complaint and granting summary judgment in favor of the defendants, which motion was made returnable at Special Term Part III of this Court on the 13th day of December, 1957, at 10:00 435
o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard; the undersigned will make a cross-motion pursuant to Section 117 of the Civil Practice Act on the aforesaid day and time for an order pursuant to Rule 113 of the Rules of Civil Practice for summary judgment in favor of the plaintiffs on their causes of action for declaratory judgments and for such

436 *Plaintiffs' Cross Notice of Motion for Summary Judgment*

other and further relief as to the Court may seem just and proper.

Dated: New York, New York,
December 10, 1957.

HARRIS L. PRESENT,
Attorney for Plaintiffs,
Office & P. O. Address,
1270 Sixth Avenue,
437 New York 20, New York.

To:

PETER CAMPBELL BROWN, Esq.,
Attorney for Defendants,
Municipal Building,
New York 7, New York.

SAXE, BACON & O'SHEA, Esqs.,
Attorneys for Defendant-Intervenor,
20 Exchange Place,
New York 5, New York.

438

439

Affidavit of Sidney Dickstein, Read in Support of Plaintiffs' Motions and in Opposition to Defendants' and Defendants-Intervenors' Motions

SUPREME COURT OF THE STATE OF NEW YORK

County of New York

[Same Title]

440

State of New York }
County of New York } ss.:

Sidney Dickstein, being duly sworn, deposes and says:

I am an attorney associated with Harris L. Present, attorney for the plaintiffs herein, and submit this affidavit in support of the plaintiffs' motion for a temporary injunction and plaintiffs' motion for summary judgment for the declaratory relief demanded in the complaint. This affidavit is further submitted in opposition to the motions of defendants and defendant-intervenor for judgment on the pleadings and summary judgment. 441

I am fully familiar with the instant proceeding as well as the facts relating thereto, such facts being obtainable through public records or information available to the public at large.

The defendants' affidavits in opposition to plaintiffs' motions and in support of defendants' motions to dismiss and for summary judgment are predicated upon assumptions which, although they

may be generally true for Title I projects other than the Lincoln Square Project, are not based upon the actual facts relating to the matter in dispute.

Defendants regard Fordham University's participation as the sponsor of the collegiate site as purely incidental to the processing of the Lincoln Square Urban Renewal Project and upon that assumption predicate the following propositions:

1. There is nothing in the Plan which requires
443 the redeveloper of the collegiate area to be a sectarian institution.

2. No benefit has been conferred upon Fordham by reason of the site restriction to collegiate use.

3. Fordham's position in the Lincoln Square Urban Renewal Project is merely that of a guaranteed bidder for the collegiate site.

4. Because any college or university may bid competitively for the collegiate site, the public
444 bidding requirements of Section 72-k of the General Municipal Law will in and of themselves result in an ascertainment of market value.

5. No one at this time can predict whether or not Fordham University will be the successful bidder for the collegiate site.

6. Plaintiffs' arguments can only be sustained if the court is prepared to hold that under no circumstances can a religious organization ever participate in a Title I project.

Clearly, if the facts here show that the site restriction to collegiate use was adopted solely for the benefit of Fordham University and that the public bidding requirement is meaningless because of that site restriction—none of defendants' contentions can be sustained. Such are the facts of the Lincoln Square Urban Renewal Project.

When the Lincoln Square Urban Renewal Project was first proposed, discussions were held with persons or organizations who might be willing to purchase and redevelop a portion of the project area. After such discussions and on October 17, 1955, preliminary bids were closed for proposed tentative sponsorship. Thereafter, persons or organizations interested in participating as sponsors were advised that tentative sponsors had been selected but that anyone could participate at public auction. See Exhibits A, B, C and D appended hereto and made a part hereof. 446

On May 28, 1956, the Committee on Slum Clearance issued a report to Mayor Wagner and the Board of Estimate regarding the proposed Lincoln Square Project. In that report it was stated: 447

> "The redevelopment recommended by the Committee proposes the inclusion of an educational site for the midtown college and campus of Fordham University * * *." *Id.*, at p. 3.

The Site Plan included in that report shows Fordham University as the occupant of the area bounded by West 60th Street, Columbus Avenue, West 62nd Street and Amsterdam Avenue. The Site Plan makes no reference to a "collegiate site" as such, but refers only to Fordham Uni-

versity. Elsewhere in the report, it was indicated that the Committee had received an offer of $5 per square foot from Fordham University and the proposed development description at p. 13 specifically states:

> "Within the project limits, starting at West 60th Street and extended to West 62nd Street is the Fordham University Downtown School, which comprises a number of departments attended by day students. Here, adjoining
449 an area devoted to music, art and the opera, will be erected a harmonious group of school buildings which will daily accommodate over 4,000 students. These will comprise the schools of Law, Education, Business and Social Service. About 175,000 square feet of floor space will be needed for this purpose. With buildings of three and four stories to provide this space it will be possible to create a landscaped campus in mid-Manhattan."

The numerical land use analysis was set forth
450 at p. 14 of the report and showed that Fordham will occupy 305,126 square feet of space. There is no mention in the redevelopment plan of a collegiate site other than the specific references to Fordham University. There was not even a suggestion that any other collegiate institution could participate.

Thereafter and on June 29, 1956, James Felt, Chairman, City Planning Commission, sent a communication to Robert F. Wagner, as Chairman of the Board of Estimate, recommending approval of further processing of the proposed Lincoln Square Urban Renewal Plan with the Federal

Urban Renewal Administration, which communication said in part:

> "The proposed redevelopment plan includes the provision of an educational site for the Fordham University Downtown Center comprising the schools of Law, Education, Business and Social Service." (See Exhibit E, Minutes of Board of Estimate, Calendar No. 139, July 26, 1956.)

On September 27, 1956, the further processing 452
of the proposed urban renewal plan with the inclusion of Fordham University, based upon the communication from the Chairman of the City Planning Commission and the Report of May 26, 1956, of the Committee on Slum Clearance, was approved by the Board of Estimate and upon its approval the Mayor, as Chairman of the Board of Estimate, issued a statement relating to relocation which stated in part:

> "We have already been assured by Fordham University and by the Music and Art sponsors of their full cooperation toward an 453
> orderly, humane and thoroughly adequate relocation program."

Thereafter an action was commenced against the defendants herein by taxpayers and others seeking to enjoin the further processing of the Lincoln Square Urban Renewal Project on the basis of Fordham University's participation in that project. (*Lochner v. City of New York*, Supreme Court, New York County, Index No. 15014/56).

454 A legal challenge having been made to Fordham University's designation as a sponsor, on information and belief, the Committee on Slum Clearance advised Skidmore, Owings & Merrill, coordinating architects for the project, to delete the name of Fordham University from the site plan and to substitute instead the word "institution" or "collegiate site" or some other euphemism. Similar instructions were given for the deletion of the name of St. Matthew's Roman Catholic Church, another challenged sponsor, and substi-
455 tution of the word "institution." The coordinating architects complied with such instructions and in a relocation brochure dated January 14, 1957, issued by the Committee on Slum Clearance, the Site Plan map set forth at pp. 4-5 of that brochure substituted the word "Institution" for the words "Fordham University," and the word "Institution" for the words "St. Matthew's Roman Catholic Church," but the building delineations formerly shown for Fordham University and St. Matthew's remained the same. In that brochure, for the first time, the words "Collegiate
456 Center" were used in substitution for "Fordham University" in the cost estimate set forth at page 10. When the Site Plan was reproduced as an appendix to the Report of the City Planning Commission on the Lincoln Square Urban Renewal Project, dated October 2, 1957, the buildings of Fordham University were designated both as "Fordham University" and "educational units" and the building for St. Matthew's Roman Catholic Church was no longer designated as "institution," but instead merely "church." See Exhibit B, appended to the affidavit of Sidney Dickstein dated November 27, 1957.

In spite of this history of predestination, defendants contend that the site restriction for collegiate use was not adopted with Fordham University specifically in mind and that at public auction some other college or university may very well outbid Fordham. This contention, however, is in direct conflict with the statement of William Lebwohl, Director of Slum Clearance, at the public hearing before the Board of Estimate held on the 25th day of October, 1957. Mr. Lebwohl was asked whether or not any other colleges or universities had been approached regarding sponsorship of the collegiate site and he replied that the Committee on Slum Clearance had contacted other schools and universities but that none of them was interested in participating. 458

The factual background of the Lincoln Square Urban Renewal Project leads to the inexorable conclusion that the use restriction to collegiate purposes has been adopted specifically with Fordham University in mind and for its specific benefit. It is a matter of public knowledge that a university cannot acquire a new campus on the spur of the moment. A building fund must be raised; plans for expanding facilities and faculty must be made; years of planning are required. It is inconceivable for another college or university to suddenly appear at public auction and outbid Fordham for the property. Yet it is upon such a strained presumption that defendants predicate their defense. 459

The Issue Before the Court

The affidavit of Robert Moses sworn to the 4th day of December, 1957 states: "The plaintiffs have raised the following constitutional question:

460 Do the Federal and State Constitutions require that sectarian institutions be excluded from a neighborhood or community which is being replanned and reconstructed as part of a slum clearance and redevelopment project?"

Plaintiffs deny that this is the issue before the Court. There are many ways in which a sectarian institution can properly and legally be included within a neighborhood or community being redeveloped pursuant to Title I of the National Housing Act. Only in the City of New York are
461 Title I projects conducted in the manner employed by the Committee on Slum Clearance. Elsewhere, a redevelopment plan is adopted without regard to and without the solicitation of definite sponsors. Thus, although site restrictions may be imposed for housing, educational purposes, community facilities, etc., such restrictions are not predicated upon predetermined utilization by a specific redeveloper. Under this methodology, if a site restriction is adopted for general community facilities, clearly a church or parochial school could participate in public auction and, if it is the highest
462 bidder, could and would be the redeveloper. The objectionable feature of the Lincoln Square Urban Renewal Project is that the site restriction to college use has been adopted solely upon the desire and agreement of Fordham University to erect a Downtown Graduate Center on that site. Thus the issue is limited to the particular facts before the Court, and because this state of facts is *sui generis*, no rule of general exclusion results and speculative consequences are irrelevant.

Parenthetically, however, plaintiffs believe that a site restriction in a Title I project to use by

churches or parochial schools only, might very well be invalid, but on the other hand no objection, constitutional or otherwise, could be made against a broader site restriction which would permit churches, clubs, community recreation centers, etc. to bid against one another. Under such circumstances, a church, if it is the highest bidder, could redevelop for its own sectarian purposes.

THE RESTRICTIVE USE

464

The affidavit of Robert Moses, sworn to the 4th day of December, 1957, seeks to create doubt as to the narrowness of the use restriction by referring to Paragraph 302 of the sponsorship contract between the city and Fordham University, annexed to that affidavit as Exhibit B. The affidavit points to the contractual provision that the site plan included within the contract is only one of the "possible" plans and is not necessarily the plan to be finally utilized for the project. This provision of the sponsorship contract means nothing more than that Fordham may, with the consent of the Committee on Slum Clearance, change the building layout for the site. But the contract, as well as the Conditions of Sale, makes it clear that a collegiate institution and only a collegiate institution can meet the site plan restrictions. Certainly if any other college institution planned or intended to compete for the collegiate site, this fact would already have been revealed. But instead of facts, the defendants offer vain conjecture.

465

Defendants seek to make much of the withdrawal of St. Matthew's Roman Catholic Church and the substitution of the American Red Cross

466 *Affidavit of Sidney Dickstein*

as the redevelopment sponsor of the institutional area. The institutional area is a site of 50,000 square feet restricted only to the extent that it must be redeveloped by an institutional user. There undoubtedly are hundreds of institutions in the City of New York who may appear at public auction and outbid the American Red Cross for the site. But there is not a single college or university in the City of New York or elsewhere that has shown the slightest interest in the purchase of the collegiate site which consists of more than
467 300,000 square feet. When defendants attempt to equate the institutional site with the collegiate site and insist that Fordham University can be substituted "with equal facility with respect to the educational area", their lack of candor is apparent.

The use restrictions in the Lincoln Square Urban Renewal Project have been questioned by the Administrator of the Federal Housing and Home Finance Agency. On July 25, 1957, Albert M. Cole, the Housing Administrator, wrote to Mayor Robert F. Wagner in reference to this project
468 and stated in part:

> "The point at issue concerns the determination of fair reuse value as required by Title I of the Housing Act of 1949 of lands to be sold to redevelopment sponsors in the Lincoln Square project area. As you probably know, this project is still in planning and has not yet been put under Federal capital grant contract. About six months ago, Mr. Moses's staff was advised that this Agency would require an appraisal by appraisers selected by the Agency, in addition to the usual two

appraisals to be submitted by the Committee on Slum Clearance. We have taken this position because of deficiencies in the first appraisal submitted by the Committee, the large amounts of money involved in the Lincoln Square project, and nation-wide public concern that a religious institution might be publicly subsidized by the sale of land for its use at less than fair value. *Moreover, the project proposals do not appear to assure the broad competition for the project sites which would otherwise tend to make certain that fair value would be determined in the market place.*" [Emphasis supplied] 470

Because of the concern of the Federal Housing Administrator, new and higher appraisals were obtained and the price to Fordham was increased. But even then, the price was the product of negotiations and is not the basis for the ascertainment of market value.

THE NATURE OF SUBSIDY

Defendants contend that no subsidy will be received by Fordham University as the result of Fordham's acquisition of the collegiate site. Defendants' contention in this regard is partially based upon the proposition that the fair re-use value and fair market value of the site for use as a collegiate area will be automatically determined by the resale price arrived at through public auction pursuant to the provisions of General Municipal Law, Section 72-k. Parenthentically, it should be noted that the terms "fair re-use value" and "fair market value" are hardly 471

synonomous. Market value is the price at which a seller would be willing to sell and a buyer would be willing to buy. If Fordham University decided that it wished to assemble a parcel of 300,000 square feet in midtown Manhattan, it would of course have to arrive at negotiated purchase prices with the various owners of portions of that parcel. The fact that Fordham intended to use the site strictly for educational purposes would in no wise affect the price which would be asked by private owners of realty. Fordham
473 would have to pay the price that such owners would consider proper market value without regard to the nature of re-use. Undoubtedly, certain owners of realty would insist on far more than fair market value and Fordham might be compelled to pay far more than fair market value if it desired to assemble a contiguous plottage of this size. Even if Fordham paid the City of New York the full cost of acquisition for the collegiate site, it would nevertheless be aided by the public power of condemnation which prevents a property owner from obtaining more than fair market
474 value.

But, again considering the presumed position of Fordham as a private purchaser, it would, after acquisition, have to bear the cost of vacating the acquired buildings and demolishing them. It would, of course, receive rental income from the tenants in such buildings during the time between acquisition and vacation, but the rental income which it would receive would be earned on the basis of a capital investment equivalent to or greater than the value of the land and the value of the buildings as rentable structures. Defendants state that Fordham University will be obligated by its agreement with the City to bear the

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cost of tenant relocation and building demolition. If Fordham, however, stood in the position of a private purchaser, it would bear the same cost. Indeed, Fordham's position as a Title I redeveloper is even better than would be its position as a private purchaser, for during the period prior to relocation it will receive rental income from the property, but such rental income will be earned upon a capital investment of less than one-half of the fair market value of land and buildings as determined by the estimates of the Committee on Slum Clearance of the cost of acquisition by condemnation. Thus, even in this regard, what defendants urge as a disadvantage to Fordham is instead a substantial advantage.

476

The nature of subsidy implicit in Title I projects becomes readily apparent when we examine the facts relating to other portions of the Lincoln Square Urban Renewal Project. The appraisers engaged by the Committee on Slum Clearance determined that the best commercial use to which the Lincoln Square site could be put is housing, and the appraisals were based upon such a presumed use. The housing sponsor of the housing site in the Lincoln Square Urban Renewal Project has agreed to pay for the property to be acquired by it the same price per square foot as Fordham University, namely, $7.00 per square foot. Nevertheless, the estimates of the cost of acquisition heretofore made by the Committee on Slum Clearance show an approximate over-all cost of acquisition averaging approximately $17.00 per square foot. There will, therefore, be an estimated differential between the cost of acquisition and the resale price of approximately $10.00 per square

477

478 *Affidavit of Sidney Dickstein*

foot. Such a differential is subsidy. It can be called by no other name. Although such subsidy may carry out the purposes of Title I of the National Housing Act of 1949 as amended, and promote the public purpose of slum clearance, that purpose is being achieved only because the Congress intended to subsidize private interests in order to make possible the rehabilitation of substandard areas. That a benefit is conferred upon private interests to achieve such public purpose is undeniable. Defendants merely confuse the
479 issue when they seek to justify the subsidy to Fordham as the achievement of public purpose. For even although the benefits to private interests may be purely incidental, Fordham University is constitutionally precluded from receiving even an "incidental benefit."

THE USE OF CREDIT

The sponsorship contract between Fordham and the City of New York, Exhibit B to the affidavit of Robert Moses, sworn to the 4th day of
480 December, 1957, provides in Paragraph 102 at page 4 for a purchase money mortgage of 65% of the purchase price to be given by Fordham as mortgagor to the City of New York as mortgagee, for a term of five years, with interest at the rate of 5% per annum, payable quarter-annually. I have been advised that this is the usual term of sale for Title I sites in the City of New York. Completely independent of any other consideration, however, the extension of credit to Fordham University authorized by the sponsorship contract is unconstitutional and invalid.

Article 11, Section 4 of the Constitution of the State of New York prohibits such an extension of credit to a denominational school and although the city may sell on such terms and conditions as it may desire to other sponsors, it cannot extend credit to Fordham University. Again, it must be emphasized that benefits which others may receive cannot be granted by government to religious institutions. This is in no way violative of the First Amendment to the Constitution of the United States, nor does it deny religious organizations equal protection under the law. The 482
cases cited in plaintiffs' memoranda show beyond any question that although a state may provide grants-in-aid and give benefits to secular private organizations, if such grants in-aid or benefits are in the public interest, it cannot give aid to religious organizations. If the doctrine of separation of church and state means anything, it means at least this.

THE DENOMINATIONAL CHARACTER OF FORDHAM UNIVERSITY

483

Plaintiffs do not deny that Fordham University is open to students of all faiths. But the answers of the defendants and the defendant-intervenor show on the pleadings that Fordham University is an institution prohibited from receiving aid, subsidy or maintenance by Article 11, Section 4 of the Constitution of the State of New York. Paragraph 7 of the answer of defendant-intervenor, Fordham University, states:

> ". . . . that Fordham University is an educational corporation, incorporated by Special Act of the Legislature of the State of New

484 *Affidavit of Sidney Dickstein*

York (Chapter 61 Laws of 1846, * * *) that said university is conducted by members of the Society of Jesus, a religious order of the Roman Catholic Church; that enrollment therein is not limited to the students of the Catholic faith; and that courses in the Catholic religion are conducted in certain of its schools."

485 Paragraph 7 of the answer of defendants City of New York and officials of the City of New York, makes the same admissions.

Article 11, Section 4 of the State Constitution prohibits aid "to any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught." The admissions that Fordham is a university conducted by members of the Society of Jesus, a religious order of the Roman Catholic Church, and that courses in the Catholic religion are conducted in certain of its schools, brings it unquestionably within the constitutional prohibi-
486 tion.

Moreover, even in the absence of such specific language, Fordham University is a sectarian school within the meaning of the First Amendment to the Constitution of the United States as it has been consistently interpreted by the courts.

THE UNSEVERABLE NATURE OF THE LINCOLN SQUARE URBAN RENEWAL PROJECT

The defendants maintain that even if Fordham University's participation as a sponsor is held to be invalid and unconstitutional, this in no wise

affects the balance of the project. This contention, however, ignores the legal prerequisites to the project's validity.

Section 72-k of the General Municipal Law provides:

> "The prior consent of the city planning commission or other analogous body of such municipal corporation shall be required for the acquisition of property by such municipal corporation for the purposes of this subdivision, which prior consent shall be based 488
> upon a finding made by such city planning commission or other analogous body after a public hearing thereon, that such acquisition is necessary for the clearance, replanning, reconstruction and neighborhood rehabilitation of real property in a substandard and insanitary area."

The Report on Lincoln Square Urban Renewal Plan and Project of the City Planning Commission dated October 25, 1957 (Exhibit C to defendants' answer) shows that the City Planning Com- 489
mission arrived at its conclusion that the project area was substandard through consideration of the character of the area in its entirety. There were no findings that any individual portion is necessarily substandard. The finding that the area is substandard is of course an over-all determination which may be made in spite of the fact that certain individual structures within the area or even all of the structures in a substantial portion of the area may be standard or above standard. Similar findings as to substandard character of the entire area were made by the Board of Estimate prior to its final approval of the project.

490 Moreover, neither the City Planning Commission nor the Board of Estimate could have approved the renewal plan, providing as it does for a collegiate site, unless they relied upon Fordham's sponsorship of the collegiate site. The defendants' prior statements demonstrate that neither the City Planning Commission nor the Board of Estimate would have approved such a site restriction except for the assurance of Fordham's sponsorship. Without such sponsorship, a collegiate reuse restriction would be clearly arbi-
491 trary and capricious and would result in no redevelopment at all. If the Court declares Fordham University to be an ineligible sponser, but nevertheless approves the renewal plan with its inclusion of a collegiate site, it would be substituting its own judgment for the prior administrative and legislative determinations by the City Planning Commission and the Board of Estimate.

Furthermore, if, as defendants urge, the Court considers the entire project as being severable into its component parts of housing, performing arts, education, etc., it would be necessarily mak-
492 ing its own determination as to the substandard character of the individual parts, a power and responsibility which is statutorily and exclusively granted to the City Planning Commission and the Board of Estimate. In other words, no one can presume that the project area, excluding the collegiate site, would necessarily have been found to be substandard by the City Planning Commission and the Board of Estimate. Clearly, on the record herein, there has never been such a finding and such a finding is a mandatory statutory prerequisite to further processing.

CONCLUSION

Defendants place their heaviest reliance upon the public bidding requirements of Section 72-k, General Municipal Law, to demonstrate that Fordham University will not necessarily be the redeveloper of the collegiate site and that by reason of competitive bidding, even if Fordham University is the redeveloper, no subsidy will result. These conclusions are patently erroneous, for they are made in total disregard of the factual aspects of Fordham's participation as a sponsor 494
of the Lincoln Square Urban Renewal Project. The defense to the relief sought by the plaintiffs is predicated entirely upon idle speculation and ignores these facts.

Plaintiffs believe that they have good and meritorious causes of action and that there is no defense to their causes of action. Plaintiffs further believe that the record herein does not present a genuine issue of fact and that, in addition to the temporary injunctive relief heretofore sought, they should therefore be granted summary judgment for the declaratory relief demanded in the 495
complaint.

No prior application has been made for summary judgment as requested herein.

SIDNEY DICKSTEIN.

(Sworn to December 12, 1957.)

496

Exhibit A, Annexed to Affidavit of Sidney Dickstein

CITY OF NEW YORK
OFFICE OF COMMITTEE ON SLUM CLEARANCE

Randall's Island
New York 35, N. Y.
Telephone TRafalgar 6-9700

June 28, 1956

Mr. Herbert S. Greenwald
497 135 South LaSalle Street
Chicago 3, Illinois

Re: Lincoln Square Slum Clearance Project

Dear Sir:

I have your letter dated June 25, 1956 offering to sponsor the redevelopment of the Lincoln Square project.

We previously solicited bids for the sponsorship of this project in October 1955 and tentative
498 sponsors who bid $9.35 a square foot were designated. This merely obligates the sponsors to enter into a contract with the City to give a minimum bid at the price agreed upon, and obligates them to relocate the tenants, demolish the buildings and construct the new housing. In the meantime, we are processing our plans with the Housing and Home Finance Agency and negotiating the terms of the redevelopment contract to be entered into between the City and the tentative sponsors.

Exhibit A

Upon approval by the Housing and Home Finance Agency and the Board of Estimate, the properties will be acquired by the City and sold at public auction. We anticipate that the sale will be held early in 1957.

The sale by the City will be publicized and you will have full opportunity to examine the proposals and to bid at the public auction. Your active interest and bid for the project at the time of the sale is solicited.

Very truly yours,

/s/ Robert Moses
Chairman

502

Exhibit B, Annexed to Affidavit of Sidney Dickstein

City of New York
Office of Committee on Slum Clearance

Randall's Island
New York 35, N. Y.
Telephone TRafalgar 6-9700

February 15, 1956

503 Myles E. Rieser Company, Inc.
280 Madison Avenue
New York 16, N. Y.

Att: Mr. Myles E. Rieser

Gentlemen:

I have your letter dated February 10, 1956, expressing an interest in the acquisition of the southwest corner of 66th Street and Broadway in the Lincoln Square slum clearance project.

504 A tentative sponsor for the area has been selected. However, you will be given every opportunity to bid at the public auction to be held by the City of New York on the various areas scheduled for private redevelopment.

Your continued interest is very much appreciated.

Very truly yours,

Director

505

Exhibit C, Annexed to Affidavit of Sidney Dickstein

City of New York
Office of Committee on Slum Clearance

Randall's Island
New York 35, N. Y.
Telephone TRafalgar 6-9700

October 19, 1955

506

Mr. Abraham Engelman
141 Broadway
New York, N. Y.

Dear Sir:

In response to your telegram please be advised that preliminary bids for the proposed tentative sponsorship for Lincoln Square were closed October 17, 1955. You may, of course, bid at the public auction which will be held in the future.

Very truly yours,

507

Director

WSL:BS
cc: file

508

Exhibit D, Annexed to Affidavit of Sidney Dickstein

City of New York
Office of Committee on Slum Clearance

Randall's Island
New York 35, N. Y.

Telephone TRafalgar 6-9700

August 23, 1956

509 Mr. Daniel A. Brener
Brener & Lewis Co.
11 East 48th Street
New York 17, N. Y.

Dear Mr. Brener:

I have your letter dated August 10, 1956, expressing interest in sponsoring the redevelopment of the Theatre Center of the Lincoln Square project.

With respect to the theater proposal, as we told you in our letter of June 21st, we are now working
510 on this part of the redevelopment plan with a group headed by Roger Stevens. You may by law enter your own proposal in accordance with arrangements which will be made by the Committee for submitting bids for sponsorship. Those interested, including yourself, will be notified after the September meeting of the Committee of the time during which proposals will be considered by the Committee.

Each interested bidder will be asked to submit a firm offer in dollars per square foot for the property to be acquired, together with the names,

addresses, financial references, personal real estate holdings and constructive activities of the members of the sponsoring group. A certified check in an amount to be determined by the Committee, drawn to the Order of the Treasurer of the City of New York, will be required with each offer. The check will be held as security for the offer made. The tentative sponsor will be selected from among those making proposals after review of all data submitted and the prices offered. At a later date, to be set by the Board of Estimate, after approval of the project by the Federal Government and the City, the tentative sponsor will be required to make the committed bid at a public auction in competition with other bidders, and if he is the successful bidder will be required to carry out the project terms in accordance with the provisions of the contract.

You may be sure that all proposals submitted by tentative sponsors will be carefully reviewed and consideration will be given to any proposal that you make to this Committee in accordance with these arrangements.

Very truly yours,

Assistant to Chairman

WSL:GES:ES
CC: Mr. Lebwohl, Mr. Brooks, Mr. Gapin
File (Mr. Spargo)

514

Exhibit E, Annexed to Affidavit of Sidney Dickstein

Cal. No. 139.

Committee on Slum Clearance; Federal Urban Renewal Administration—Authority to Present and Process Proposed Plan for Lincoln Square Urban Renewal Project, Manhattan.

(Secs. 4 Call)

515 On June 15, 1956 (Cal. No. 362), this matter was referred to the City Planning Commission and the Corporation Counsel.

The Secretary presented a communication dated June 7, 1956, from the Chairman of the Committee on Slum Clearance, summarized hereinafter, and the following reports of the City Planning Commission and the Corporation Counsel:

(CP-12553)

June 29, 1956.

516 Hon. Robert F. Wagner, Mayor, Chairman, Board of Estimate:

Sir—At the meeting of the Board of Estimate held on June 15, 1956, Cal. No. 362, there was referred to the City Planning Commission a communication, dated June 7, 1956, from the Chairman of the Committee on Slum Clearance, requesting authorization to present and process with the Federal Urban Renewal Administration a proposed redevelopment plan for the Lincoln Square Slum Clearance Project within the area bounded by West 70th Street, Broadway, Colum-

Exhibit E

bus Avenue, West 60th Street, Amsterdam Avenue, West 66th Street and New York Central Railroad property, Borough of Manhattan. 517

The proposed redevelopment plan includes the provision of an educational site for the Fordham University Downtown Center, comprising the schools of Law, Education, Business and Social Service. Adjacent to this development there is to be established a musical and entertainment center including an opera house, a concert hall and several theatres. Provision is also to be made for an office building, hotel and store development. 518 The plan includes a housing development comprising twelve 20-story buildings providing a total of 4,080 dwelling units. Garages and open parking areas are to be established. Park and landscaped areas and play areas are to be provided and a site for new public school will be reserved.

The proposed redevelopment area lies within Section M-8 of the Master Plan. This section contains substandard and insanitary areas suitable for redevelopment.

On the basis of a preliminary review of this 519 project, it appears that the proposed redevelopment plan will provide for desirable and necessary housing accommodations and community facilities and that the area involved is suitable for redevelopment and is an appropriate location for the type of improvement contemplated.

After the redevelopment plan is processed by the Federal Urban Renewal Administration and submitted by the Committee on Slum Clearance for approval, and after a public hearing in accordance with legal requirements, the Commission will take such action as will then be deemed ad-

520 *Exhibit E*

visable on the basis of all information available with respect to this project.

The City Planning Commission recommends that the request of the Committee on Slum Clearance for authorization to present and process the proposed plan for the Lincoln Square project with the Federal Urban Renewal Administration be approved.

JAMES FELT,
Chairman, City Planning Commission.

521

Law Department, City of New York,

July 16, 1956.

The Board of Estimate, City of New York,

Attention MRS. RUTH W. WHALEY, Secretary:

Sirs—I have your letter dated June 19, 1956, in which you state that the Board of Estimate has referred to me the matter of a request from the Committee on Slum Clearance for authorization to present and process the Lincoln Square Urban Renewal Project, Borough of Manhattan, with the
522 Federal Urban Renewal Administration, together with a communication relating thereto from the Chairman, Committee on Slum Clearance.

The Board of Estimate on June 24, 1954 (Cal. No. 31F), approved an application to the Housing and Home Finance Administrator for Advance Funds for studies, surveys and plans for the proposed Lincoln Square Urban Renewal Project in the Borough of Manhattan. Your Board on January 26, 1956 (Cal. No. 235), approved an application to the Housing and Home Finance Administrator for additional Advance Funds for surveys and studies of additional areas for the aforesaid project.

Exhibit E

The Committee on Slum Clearance on May 28, 1956, submitted to your Board its report and proposed plan for the above project pursuant to the authority granted to the Committee by your Board as stated above.

The City Planning Commission at its meeting held on June 29, 1956 (Cal. No. 5—CP-12553), unanimously adopted a report recommending that the request of the Committee on Slum Clearance for authorization to present and process the proposed plan for the Lincoln Square Project with the Federal Urban Renewal Administration be approved.

I advise you that if you deem it in the best interest of the City, you may adopt a resolution authorizing the Committee on Slum Clearance to present and process its proposed plan for the Lincoln Square Urban Renewal Project with the Federal Urban Renewal Administration.

Yours truly,

PETER CAMPBELL BROWN,
Corporation Counsel.

The following appeared in opposition:

The Reverend V. Simpson Turner, representing Businessmen and Tenants in area; The Honorable Stanley M. Isaacs, Councilman, representing people in Lincoln Square Project area; Louis Okin, Democratic Leader, Third Assembly District North; Harris S. Present, Chairman, New York City Council on Housing Relocation Practices; Gerald Coleman, Chairman on Municipal Affairs Committee of Liberal Party; Robert F. Meagher, representing New York Young Democrats; Milton H. Adler, republican nominee for Council speaking for Lincoln Square Tenants; Joseph A. Brennan, representing Businessmen and Tenants in

526 *Exhibit E*

Lincoln Square Area; Cyril Heath, Chairman, Tenants League of Amsterdam Avenue; Richard Schuckman, Chairman, Lincoln Square Businessmens Committee; Mrs. Olga Siversie, representing Riverside Neighborhood Assembly; Mrs. Ella Roberts, tenant in area affected; Jay Schulman, Teacher-Tenant in area affected; Charles Zayas, representing Puerto Rican People and Puerto Rican Merchants in Lincoln Square; Mrs. Augusta Koenig, citizen in area; Arnold P. Johnson, Committee for improvement for Tenants and Business-
527 men, Godfrey Nurse Houses Area; Janet Shopis, Citizen in area; Hubert Lewis, representing Lincoln Square Tenants Committee; Richard A. Strickland, Co-Chairman, Washington Square Neighbors Association; and the Reverend Herbert C. Banks, Vicar—St. Cykrian's Church.

Statements were made by the Mayor, the Deputy Mayor, the Deputy and Acting Comptroller, the President of the Council and the President of the Borough of Manhattan.

On motion of the President of the Borough of
528 Manhattan, the matter was laid over to August 30, 1956.

Additional Exhibits Admitted on Oral Application

Report of Committee on Slum Clearance to Mayor Wagner and the Board of Estimate, May 28, 1956.

(Omitted by stipulation.)

Relocation Brochure of Committe on Slum Clearance, January 14, 1957.

(Omitted by stipulation.)

529

Affidavit of Leo A. Larkin, Read in Opposition to Plaintiffs' Motions and in Support of Defendants' and Defendants-Intervenors' Motions

SUPREME COURT

NEW YORK COUNTY

[SAME TITLE]

530

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

LEO A. LARKIN, being duly sworn, deposes and says:

1. I am the First Assistant Corporation Counsel of the City of New York, and I am fully familiar with the proceedings heretofore had herein. This affidavit is submitted in reply to the affidavit of Sidney Dickstein, sworn to December 12, 1957, in the above entitled matter.

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2. At the outset I wish to point out to the Court that Mr. Dickstein's affidavit is merely a reiteration of plaintiffs' legal contentions. Nevertheless, it is my opinion that analysis of his affidavit compels the conclusion that the plaintiffs have themselves demonstrated that their complaint lacks merit and should be dismissed.

(a)

3. In his affidavits Mr. Dickstein has made statements which, followed to their logical conclusion, wholly discredit the constitutional ques-

532 *Affidavit of Leo A. Larkin*

tions which the plaintiffs have alleged. In his earlier affidavit, sworn to November 27, 1957, in support of the application for a temporary injunction, Mr. Dickstein admitted (p. 12) that there would be no constitutional objections to the sponsorship contract if the sponsor were Columbia University or some other non-sectarian institution. In his subsequent affidavit, sworn to December 12, 1957, in support of the plaintiffs' cross-motion for summary judgment (pp. 7-8)
533 he concedes that if there were no sponsorship contracts and if under those circumstances Fordham University were the successful bidder for redevelopment of the site, there would be no constitutional objections. The Court will recall that upon the argument on December 13, 1957, Mr. Present, the attorney for the plaintiffs, conceded that if under such circumstances Fordham outbid a sectarian or non-sectarian institution, there could be no constitutional objections on the ground of aid to religion.

4. Clearly, then, the plaintiffs' main argument
534 is: They object because the City of New York has accepted Fordham University as the conditional sponsor for redevelopment of the collegiate site in advance of the acquisition and public auction of the land. But this is no more than has been done in every other Title I proceeding in which the City of New York has been involved. The allocation of a definite area for a particular form of redevelopment and the execution of a pre-auction contract with a sponsor is a procedure which has been upheld by the courts in *Kaskel v. Impellitteri*, *Boro Hall Corp. v. Impellitteri*, and *Bleecker Luncheonette Inc. v. Wagner* (cited

at p. 13 of Defendants' Memorandum in Opposition to the motion for temporary injunction). In those cases the courts rejected the claim, identical to plaintiffs' contention herein, that the allocation of a definite area to a particular form of redevelopment and the execution of a pre-auction contract with a sponsor discourage competitive bidding and violate the requirement of the statute requiring a sale at public auction at the highest marketable price.

5. The *Boro Hall* and the *Bleecker Luncheonette* cases also involved sponsors that were educational institutions. However, unlike Fordham University, which has no buildings or plant within the project area, in the *Boro Hall* case involving the Fort Greene project, the sponsor, Long Island University, owned a building devoted to educational purposes which was excluded from the area; and in the *Bleecker Luncheonette* case involving the Washington Square slum project, the sponsor, New York University, similarly owned a building which was excluded from the project area. Since the courts found that the procedures adopted did not violate the provisions of Section 72-k of the General Municipal Law requiring a sale at public auction, then *a fortiori*, such provisions are not violated here. The complete answer to the plaintiffs' contention is that which was given by the Court of Appeals in the *Kaskel* case (306 N. Y. at p. 95) wherein the Court points out that the statutory provisions requiring sale at public auction are not violated where the sponsorship contracts are conditioned upon the sponsors' being the highest bidders. See also the opinion of Mr. Justice Eder in the

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Bleecker Luncheonette case (141 N. Y. S. 2nd at pp. 297-298). Of particular interest is Mr. Justice Eder's rejection of the contention that the sponsorship agreement signifies that the property is thereby "earmarked" for the sponsor. The holding of these cases is that the existence of sponsorship contract does not in any way affect the character of the sales by the City of the redevelopment areas so as to render them anything but true auction sales in compliance with Section 72-k of the General Municipal Law.

539

(b)

6. Mr. Dickstein places significance upon the fact that an interim report of the Committee on Slum Clearance, dated May 28, 1956, identifies Fordham University as the institution interested in the development of the area set aside for redevelopment as a collegiate site. This brochure merely reflected the fact that at the time of its issuance (May 28, 1956) Fordham University had already been approved by the Committee as tentative sponsor on October 17, 1955 (Dickstein's affidavit, p. 3) subject to the approval of the Board of Estimate and the federal agency. The true nature of this brochure was set forth in the affidavit submitted by Mr. Moses in support of the defendants' motions for dismissal of the complaint in *Loebner* v. *The City of New York*. At page 15 of that affidavit, sworn to January 10, 1957, Mr. Moses said:

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> "16. The only basis for the allegations made in the complaint are statements which may be found in a brochure, dated May 28, 1956, which I, as Chairman of the Committee

on Slum Clearance, transmitted to the Board of Estimate on June 7, 1956 in connection with my request for authorization to present and process the proposed Lincoln Square Slum Clearance Project with the Federal Urban Renewal Administration. This brochure is an informal, intermediate work progress report describing the proposed project in terms of ultimate objectives which might be achieved in the project area. That brochure, marked Exhibit A, is made a part of this affidavit and will be submitted to this 542
Court upon the argument of this motion.

17. I want to emphasize at this point the completely informational character of this brochure. Nothing therein contained is of a definitive nature; it does not, cannot, and was not intended in any way to bind the City of New York. The true nature of this informational report may be ascertained from a study of correspondence between the Committee on Slum Clearance and the Federal Urban Renewal Administration. Copies of 543
that correspondence are annexed hereto as Exhibits B through D."

Copies of the correspondence referred to in the quotation from Mr. Moses' affidavit are annexed hereto and similarly marked Exhibits B through D.

The identification of the tentative sponsor in the brochure, I point out, was not found objectionable in the *Bleecker Luncheonette* and the *Boro Hall* cases, discussed above. See, also, the reports of the City Planning Commission printed in the Journal of the Board of Estimate, 1952, p. 16382 and 1953, p. 17244.

544 *Affidavit of Leo A. Larkin*

7. The essential fact, i.e., that this area was intended to be devoted to educational or collegiate purposes, remained and still remains unchanged, as Mr. Dickstein's own reference to the relocation brochure, dated January 14, 1957, so plainly indicates.

(c)

8. The plaintiffs' contentions are so transparently devoid of merit that Mr. Dickstein, in desperation, has seized upon the fact that the
545 sponsorship contract provides for a purchase money mortgage. Mr. Dickstein admits that this is a common practice in Title I transactions (p. 14). What he has failed to state, however, is that provision for a purchase money mortgage is one of the terms of sale on which almost all City property is sold at public auction. Representatives of the Bureau of Real Estate of the Board of Estimate inform me that this practice was in effect, to their knowledge, at least as far back as 1922 (see Exhibit A, annexed hereto, which is a true copy of terms of sales of City property in
546 1922), and at that time had been long established.

9. The well established practice of providing for a purchase money mortgage extends to all purchasers at public auction, whether sectarian or non-sectarian in character. Indeed, purchase money mortgage provisions were contained in the sponsorship contracts with Long Island University and New York University in the Fort Greene and Washington Square projects, respectively. (See Journal of the Board of Estimate, 1953, p. 1928, and 1954, p. 14240.) Furthermore, I have been informed by the Bureau of Real Estate of the Board of Estimate that there have

been numerous sales of real property by the City of New York at public auction, over the years, to religious institutions under terms providing for a purchase money mortgage. The following are merely a few representative illustrations of such transactions:

Lot	Block	County	Date of Sale	Name of Purchaser
35	7017	Kings	11/24/44	Progressive Congregation Anshei Polin of Coney Island 548
37	4627	Bronx	1/30/46	Yeshiva Ahavath Torah
62) 63) 64)	342	New York	5/17/51	Orthodox Catholic Alliance
16	2067	New York	5/18/51	St. John the Baptist 549
17	2071	Kings	1/6/49	Roman Catholic Diocese of Brooklyn
8	161	Queens	11/16/51	Congregation Ahavath Torah of Sunnyside
6	1820	Manhattan	7/3/53	United Sabbath Day Adventists

550 *Affidavit of Leo A. Larkin*

10. This well-established practice indicates a practical construction of long standing that purchase money mortgages do not violate either Article 8, Section 1, of the Constitution (prohibiting extension of city credit to private persons), as plaintiffs concede; or Article 11, Section 4, of the New York State Constitution or the First Amendment of the Federal Constitution.

11. Plaintiffs' objection to the purchase money mortgage provision is merely another expression
551 of its claim that the constitution requires the imposition of special burdens upon religious institutions, so that they may not bid at public auction upon terms and conditions available to others. Such contention has been fully refuted and, as indicated earlier, its lack of merit has been recognized by the plaintiffs themselves.

It is therefore respectfully requested that the defendants' motions be granted and the complaint dismissed on the merits.

552 LEO A. LARKIN.

(Sworn to December 18, 1957.)

553

Exhibit A, Annexed to Affidavit of Leo A. Larkin

AUCTION SALE

Of Property Owned by the

CITY OF NEW YORK

MANHATTAN, BRONX AND QUEENS BOROUGHS

To be sold by order of the
COMMISSIONERS OF THE SINKING FUND

554

Commencing

AUGUST 9TH, 1922
12 o'Clock Noon

AT THE 69TH REGIMENT ARMORY

Lexington Avenue and E. 26th Street
Under the Direction of
CHARLES L. CRAIG
Comptroller of the City of New York

The following are the authorized Auctioneers:

555

Henry Brady,
139 West 33rd St.,
New York.

Samuel Marx,
115 West 23rd St.,
New York.

Joseph P. Day, Inc.
Auctioneer
67 Liberty St., N. Y.

Thomas A. Hovenden,
187 Montague St.,
Brooklyn.

Theodore Archer,
40 New York Ave.,
Jamaica.

556 *Exhibit A*

TERMS OF SALE

The purchaser will be required at the time of sale to sign a memorandum of his purchase and to deposit with the Comptroller a sum equal to ten per cent. of the amount of his bid and pay to the auctioneer his fee of one-half of one per cent. of the bid price. The sum so deposited will be applied by the Comptroller upon the purchase price unless forfeited by the default of the purchaser as hereinafter provided.

557 Seventy-five per cent. of the purchase price, or such portion thereof as the purchaser may desire, may be paid by the giving of a purchase money mortgage and the bond of the purchaser running for five years, with interest at five per cent., the purchaser to pay the recording tax, the recording fee, and all Federal or State taxes or fees in relation thereto, except the mortgage tax; the interest on such bond and mortgage to be paid semi-annually, and the purchaser shall have the privilege of paying off said bond and mortgage, or any part thereof, at any time.

558 The balance of the purchase money will be required to be paid in cash or certified check at the Real Estate Division, in the Office of the Comptroller, Room 733, Municipal Building, Borough of Manhattan, at twelve o'clock noon, twenty (20) days from the date of sale.

The property will be conveyed by The City of New York free and clear of all taxes and assessments which have become a lien thereon on or prior to the date of sale.

Each parcel of property shall be sold subject to any leases, easements, encumbrances or restrictions specified in the description thereof, as well as subject to existing tenancies and any state of facts that an accurate survey would show.

Exhibit A

Each parcel of property will be conveyed by a full covenant and warranty deed in accordance with the description set forth in the resolution of the Commissioners of the Sinking Fund and contained in the catalogue, and subject to any leases, easements, encumbrances or restrictions specified in the description thereof, as well as subject to existing tenancies and any state of facts that an accurate survey may show; the liability of The City of New York upon such covenants and warranty to be limited, however, to the return of the purchase price, with interest at six per cent. and the payment of costs and a reasonable counsel fee to be fixed by the Court and taxed in the action or proceeding wherein the City's liability is determined.

Rents shall be apportioned as of the date of taking title.

The bids will be kept open after the property is struck down until the payment to the Comptroller of ten per cent. of the amount of the bid and to the auctioneer of his fee; and in case the purchaser shall fail to make such payments, or either of them, or to sign the memorandum of his purchase, the premises so struck down to him may, at the option of the Comptroller of The City of New York, be again put up for sale.

In case any purchaser shall fail to complete his purchase by the payment of the whole of the purchase price within the time required, and in accordance with the terms and conditions of the sale, he shall forfeit to The City of New York as liquidated damages his deposit of ten per cent. made at the time the property is struck down; and the premises so struck down to him may, at the option of the Comptroller of The City of New York, be again put up for sale upon the same terms and conditions without liability or accountability of any kind to such purchaser.

562

Exhibit B, Annexed to Affidavit of Leo A. Larkin

HOUSING AND HOME FINANCE AGENCY

Office of the Regional Administrator
Region I
346 Broadway
New York 13, New York

June 27, 1956

Mr. William S. Lebwohl
563 Director, Office of Committee
on Slum Clearance
Randall's Island
New York 35, New York

Dear Mr. Lebwohl:

This is to confirm our discussion on June 15 concerning the New York City Lincoln Square Title I project. At this meeting your attention was called to Mr. Follin's letter to Mr. Moses of September 22, 1955 which confirmed our agreement that brochures would not be printed until
564 after the completion of the final project report. You will recall that the understanding set forth in Mr. Follin's letter was confirmed by Mr. Moses reply of September 28, 1955.

In reviewing the brochure for the Lincoln Square project, we notice that the statement is made that offers for the price of the land to be conveyed to the institutional users are in conformity with appraisals made by the real estate consultants employed by the Committee. This, as we discussed, is not in conformity with the established policy explained to the Committee in the

case of the Washington Square Southeast project, where it was agreed that the price paid by institutional users must be the same as that paid for the most suitable private reuse. The offer from private redevelopers mentioned in the brochure exceeds any of the offers from institutional reusers, although the location of the land for institutional reuse might well be better and the price for private reuse correspondingly higher. It is not necessary at this juncture that the actual prices to be paid by the institutional developer be definitely determined, but we shall require additional appraisals before this is done. It is important however at this time that the institutional reusers understand that the prices in the brochure may not prevail. 566

The brochure also makes a particular point of that fact that each redeveloper will establish a separate relocation office and will work independently of the others, although conceivably such an operation would be overlapping and wasteful, and possibly ineffective. The brochure does mention, however, that in addition to the usual supervisory arrangements established by the Bureau of Real Estate, a Special Tenants Relations Committee will be established for the Lincoln Square area. It is also our understanding from recently published statements of the Committee on Slum Clearance that relocation payments averaging $400 a family will be made by the sponsors. 567

We would appreciate receiving from you, in writing, the explanation you gave concerning the printing of the brochure at this time, the institutional redevelopers understanding as to the price

568 *Exhibit B*

to be paid for the land, and a statement concerning the proposed method of relocation, the relationship of the Special Tenants Relations Committee to the individual sponsors and the source of any relocation payments to be made to tenants.

The omission of comments in this letter on other portions of the brochure such as the redevelopment plan, reuse land values for private redevelopers, cost estimates, etc., is not to be construed as our approval of such portions since the
569 brochure is essentially promotional in character and not acceptable as an official submission. Complete and official comments will be made subsequent to the submission of a preliminary project report and a final project report.

Sincerely yours,

/s/ C. J. Horan
Charles J. Horan
Regional Director of Urban Renewal

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Exhibit C, Annexed to Affidavit of Leo A. Larkin

CITY OF NEW YORK

OFFICE OF COMMITTEE ON SLUM CLEARANCE

Randall's Island
New York 35, N. Y.

Telephone TRafalgar 6-9700

July 19, 1956

572

Mr. Charles J. Horan, Director
Urban Renewal Administration
Housing and Home Finance Agency
346 Broadway
New York 13, N. Y.

Dear Mr. Horan:

I have your letter of June 27th, with respect to the comments of Mr. Follin on the Lincoln Square brochure.

573

As I told you at our discussion, this is not in any way a final plan. It is a preliminary report of the Committee to the Board of Estimate on the project work. Our thought was that the reference in Mr. Follin's letter of September 22, 1955 was directed at the final plan agreed upon with the federal agencies.

The fact is that in order to proceed with final negotiations for a project, a Committee report must be submitted to the Board of Estimate and made public to get consideration by the Board and authorization to proceed to negotiate the final redevelopment plan with your agency. In

addition, public concern and interest in these projects make necessary issuance of these reports on Committee work on each project.

With respect to the offers made by redevelopers, of course we understand that these prices are not final, and all sponsors understand that their offers are subject to approval by your agency and the Board of Estimate in the final contracts and to public auction as well. We do question, as we have in the past, any rule that "the price paid
575 by institutional users must be the same as that paid for the most suitable private re-use." However, the appraisals submitted must satisfy you and in the last analysis you will have approval of all offers made.

With respect to the relocation of the residential tenants, our redevelopment contracts with respective sponsors will require them to relocate the residential tenants under the supervision of the Bureau of Real Estate of the Board of Estimate. Each sponsor will separately maintain its own management office but a relocation office, operated
576 by the Bureau of Real Estate of the Board of Estimate will be centrally located on the site and all relocation activities of all the sponsors will be coordinated and supervised here. Experience has shown that the average cost of the sponsors for relocation activities, which include reimbursement of personnel and administration by the Bureau of Real Estate of the Board of Estimate, finder's fees, broker's fees, painting, moving expenses, etc., is now about $340. We expect this to increase to an average of at least $400, and probably more, in Lincoln Square. We are also planning to assist in relocation of commercial tenants

Exhibit C

in Lincoln Square. We are hopeful that Congress will make provisions in the Housing Act of 1956 for relocation payments of $200 per family and at least $2,000 for commercial tenants.

A Special Tenants Relations Committee, headed by Percy Gale, Jr., Director of Real Estate, has been organized in Lincoln Square to review policies and hardship cases and, where necessary, to provide payments in excess of $400.

You may be sure that we are fully aware of the necessity for close cooperation with your office in processing the final plan. We have attempted to keep your local office in touch with everything we are doing, and we are in complete agreement that any final plan of redevelopment, including prices, facilities and plans, must bear your official approval before becoming effective.

Very truly yours,

/s/ William S. Lebwohl
Director

580

Exhibit D, Annexed to Affidavit of Leo A. Larkin

HOUSING AND HOME FINANCE AGENCY
URBAN RENEWAL ADMINISTRATION
Washington 25, D. C.

September 22, 1955

Mr. Robert Moses
Chairman
Committee on Slum Clearance
Randall's Island
581 New York 35, N. Y.

Dear Mr. Moses:

As a result of our exchange of correspondence (your letter to me of July 18, my reply of July 26, and your reply of August 4), a meeting with representatives of your office was held recently in the New York Regional Office to discuss the procedure under which the future New York City projects will be handled. Mr. Richard Steiner, Deputy Commissioner, and Mr. John Shively, Director
582 of Project Procedures and Review, represented the Washington Office and members of the New York Regional Urban Renewal staff represented the Region. As a result of these discussions, it was agreed that the Committee on Slum Clearance for New York City would submit to the Regional Office a preliminary project report for all new projects, including those projects now in a planning stage, namely, Lincoln Square, Delancey Street, Seward Park, Hammels, and Park Row. This preliminary project report will include a redevelopment plan of a preliminary nature, to-

gether with data on eligibility characteristics of the project area, information on relocation, land acquisition, land disposition, and project cost and financing.

For the Delancey Street project, the documentation is to be assembled in accordance with Part 2, Chapter 1, Section 3, Page 17, of the Local Public Agency Manual. For the remaining four projects, the documentation is to be prepared and assembled in accordance with Codes numbered R 201 to R 291, described in Section 3, Pages 3 to 584
22 of LPA Letter 45, dated December 29, 1954.

It was also agreed that loan and grant applications would be prepared and submitted in accordance with procedures outlined in LPA Letter No. 56, providing for Final Project Report, to be followed after our review and necessary local approvals by the Local Project Approval Data.

It was further agreed that the Regional Office and Central Office would make every effort to complete the processing of each preliminary project report and each final project report within six 585
weeks from the time of its submission to the Regional Office, provided that the report is in acceptable form. Similar efforts would be made to adhere to a schedule of three weeks from the receipt in acceptable form of the local project approval data to the dispatch of a grant contract.

Both the preliminary project report and final project report are to be submitted for review in typewritten form and brochures will not be printed until after completion of the final project report. The resolutions and authenticating documents in

586 *Exhibit D*

connection with the redevelopment plan will clearly identify the plan and make it a part thereof.

At the meeting the agreement contained in your letter of January 4, 1955, to Administrator Cole, was also confirmed. In this letter you agreed with the basis for handling disposition of project land proposed by Mr. Cole in his letter to you dated December 22, 1954, but you did not agree with the Administrator's suggestion that the City
587 select, on an experimental basis, a project in which the City itself would handle property management, relocation, demolition and clearance activities.

I believe the meeting was mutually beneficial, and the agreements reached should serve to clarify the procedures to be followed for future New York City projects including those now in the planning stage.

Sincerely,

588 (Signed) J. W. Follin
J. W. Follin
Urban Renewal Commissioner

589

Stipulation as to Exhibits

SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION—FIRST DEPARTMENT

64TH ST. RESIDENCES, INC., *et al.*,
Plaintiffs-Appellants,

against

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CITY OF NEW YORK, *et al.*,
Defendants-Respondents,

and

FORDHAM UNIVERSITY, *et al.*,
Defendants-Intervenors-Respondents.

IT IS HEREBY STIPULATED and AGREED by and between the attorneys for the respective parties hereto, subject to approval of this Court, that the printing of the following exhibits may be dispensed with, in the interest of economy and to avoid unnecessarily encumbering the record, without prejudice to the right of any of the parties to refer to the same in the briefs or on the argument with the same force and effect as though printed in full:

591

Urban Renewal Plan and Maps; annexed to affidavit of Robert Moses, verified Dec. 4, 1957, as Exhibit A; annexed to answer of defendants City of New York et al. as Exhibit A; and annexed to answer of defendant-intervenor Fordham University as Exhibit A.

592 *Stipulation as to Exhibits*

Proposed Sponsorship Agreement between the City of New York and Fordham University; annexed to affidavit of Robert Moses, verified Dec. 4, 1957, as Exhibit B; annexed to answer of defendants City of New York et al. as Exhibit B; and annexed to answer of defendant-intervenor Fordham University as Exhibit C.

City Planning Commission Report on Lincoln Square Urban Renewal Plan and
593 Project, October 2, 1957, CP-13508, Cal. No. 2; annexed to answer of defendants City of New York et al. as Exhibit C.

Proposed Capital Grant Contract between City of New York and Urban Renewal Administration; annexed to answer of defendant City of New York et al. as Exhibit G.

Proposed Sponsorship Agreement between the City of New York and Lincoln Center for the Performing Arts, Inc.; annexed to affidavit of Edgar B. Young, verified Dec.
594 12, 1957 as Exhibit A.

Report of Committee on Slum Clearance to Mayor Wagner and the Board of Estimate, dated May 28, 1956; referred to in affidavit of Sidney Dickstein, verified Dec. 12, 1957, and admitted as an exhibit on oral application.

Relocation Brochure of Committee on Slum Clearance, dated Jan. 14, 1957; referred to in affidavit of Sidney Dickstein, verified Dec. 12, 1957, and admitted as an exhibit on oral application.

Stipulation as to Exhibits

It is further stipulated and agreed that upon the argument of this appeal the original or copies thereof will be handed up to the Court.

Dated: New York, January 21, 1958.

Harris L. Present,
Attorney for Plaintiffs-Appellants.

Peter Campbell Brown,
Corporation Counsel, Attorney for Defendants-Respondents City of New York, et al.

Saxe, Bacon & O'Shea,
Attorneys for Defendant-Intervenor-Respondent Fordham University.

Milbank, Tweed, Hope & Hadley,
Attorneys for Defendant-Intervenor-Respondent Lincoln Center for the Performing Arts, Inc.

Rosenman, Goldmark, Colin & Kaye,
Attorneys for Defendant-Intervenor-Respondent Webb & Knapp Lincoln Square Corporation.

These exhibits are to be filed on or before Wednesday, February 5th, 1958.

So Ordered.

BE

598

Opinion of McGivern, J.

(New York Law Journal—December 24, 1957)

64th St. Residences, Inc. v. City of N. Y. (Fordham University)—This litigation had its origin in an action brought by certain owners of real property and by certain tenants in a locale known as "Lincoln Square", in the City of New York, against the City of New York, Robert F. Wagner as Mayor of the City of New York et al. The plaintiffs therein seek an injunction restraining
599 the City of New York and the other defendants from acquiring the "Lincoln Square" area by condemnation or otherwise, from executing and carrying out the terms of a proposed sponsorship contract with Fordham University, from further processing the project with the Federal Urban Renewal Administration and from expending or committing any city funds in connection with the project.

The facts, which are not in dispute, reveal that the Lincoln Square Urban Renewal Plan contemplates the razing and replanning of a slum area on
600 the west side of Manhattan Island between Sixtieth and Seventieth Street, bounded by Broadway, Columbus Avenue, West End Avenue and Riverside Drive. The area is to be developed for the following uses: Collegiate, multi-family residential, commercial, retail, public and semi-public uses. As an aid to the expedition of the project, Robert Moses as Chairman of the Committee on Slum Clearance of the City of New York, solicited and selected tentative sponsors for each of the areas involved. Fordham University was one of

the sponsors selected to bid at public auction for the redevelopment of the Collegiate site. By the terms of its sponsorship contract, Fordham bound itself to bid a minimum upset price at a public auction, upon the terms and conditions specified in the contract, and to redevelop the area in accordance with the Renewal Plan, if it became the successful bidder at the public auction.

After an order to show cause, wherein no stay was permitted, had brought on an application for a temporary injunction, and while this was still 602
sub judice, the defendants moved for an order granting: 1. Judgment on the pleadings pursuant to section 476 of the Civil Practice Act and Rule 112 of the Rules of Civil Practice, dismissing the complaint on the ground that it does not state facts sufficient to constitute a cause of action; or in the alternative: 2. Summary judgment pursuant to Rule 113 of the Rules of Civil Practice dismissing the complaint. The plaintiffs, simultaneously moved for summary judgment, conceding the absence of any genuine issue of fact.

Thus, there is alone here presented a narrow 603
Constitutional issue, testing whether or not a sectarian educational institution must be excluded from a neighborhood or a community which is being replanned and reconstructed as part of a slum clearance project directed by the government and furthered by government funds. This represents the controlling question of the controversy.

The plaintiffs contend that the proposed sponsorship by Fordham University of a portion of the redevelopment area would violate article 11, section 4 and article 1, section 7 of the New York State Constitution and the First and Fourteenth

604 *Opinion of McGivern, J.*

Amendments to the Federal Constitution, in that such sponsorship would result in the giving of governmental "aid or maintenance" to a religious educational institution. The defendants contend that no such "aid or maintenance" is involved and that the transaction between Fordham and the City of New York, assuming it is consummated, is but a lawful contract involving an exchange of valuable considerations on both sides; the defendants further contend that if Fordham were to be
605 debarred by a court of law from consummating such a contractual arrangement, such an act would constitute a denial of the equal protection of the laws and visit upon Fordham an oppressive restriction upon the free exercise of religion, guaranteed to Fordham and all others, by the Federal and State Constitution.

The court finds no force or validity in the plaintiffs' position. The contention of "aid or maintenance" to a sectarian institution in contravention of constitutional prohibitions, is not available under the circumstances obtaining here. Fordham, and indeed the other prospective sponsors who
606 may undertake to bid at public auction for the properties embraced within the redevelopment plan, are not and do not seek to be the recipients of governmental largesse. If successful at the auction, Fordham will have committed itself to pay a not inconsiderable sum of money (representing at least the full reuse value of the land as determined by appraisal), but in addition will also have: (a) undertaken to relocate the present occupants of the site, (b) demolish the structures presently there, (c) redevelop the land and construct new buildings thereon, upon meticulous terms and conditions prescribed by the Board of

Estimate of the City and the Federal Urban Renewal Administration.

Thus, if the successful bidder at the auction of the proposed Collegiate site, Fordham will merely exercise its corporate powers to contract, as may any other educational institution that cares to come forward at the time. Thus, there is no gift or subsidy contemplated but a valid contract, to be sustained by substantial consideration moving to the city, and effecting an exchange of benefits to both parties on a quid pro quo basis. This arrangement precludes a holding that the proposed sponsorship plan, challenged by the plaintiff, will operate to confer "aid" upon Fordham. To hold, under the instant circumstances, that a denominational school may not be afforded the same opportunity to contract as any other private institution or corporation, would be to convert the constitutional safeguards into a sword against the freedoms which they were intended to shield. 608

And the proposed procedure, entailing the execution of a pre-auction sponsorship contract, not unusual in Title I proceedings wherein the City has been a party, has been upheld by our Court of Appeals (Kaskel v. Impelliteri, 306 N. Y. 73, 1953, cert. den. 347 U. S. 934, 1954; Boro Hall Corp'n v. Impelliteri, 128 N. Y. S. 2d, 804 [Sup. Ct., Kings Co., 1954], aff'd 283 App. Div., 889 [2nd Dept., 1954], leave to appeal denied 307 N. Y., 672 [1954]; Bleecker Luncheonette, Inc. v. Wagner, 141 N. Y. S. 2d 293 [Sup. Ct., N. Y. Co., 1955], aff'd 286 App. Div., 828 [1st Dept., 1955], leave to appeal denied 309 N. Y. 1029 [1955]). 609

It is noteworthy that counsel for the plaintiff, on oral argument, conceded that there is no prohibi-

610 *Opinion of McGivern, J.*

tion excluding Fordham per se from the suggested plan and procedure, assuming Fordham to be the successful bidder at the auction. In the view of this court, such crucial concession leaves the plaintiffs' position without visible means of support. And in hard reality, to exclude Fordham, or any other sectarian institution, from great over-all community planning efforts, such as the Lincoln Square Project, would be to relegate such institutions to the "other side of the tracks," in perpetuity. Nor has this been the practice (cf. the affida-
611 vit of Commissioner Robert Moses, in opposition to the plaintiffs' motion for a preliminary injunction). This pre-eminent authority demonstrates statistically that denominational institutions, such as churches and schools, have long been sought and regarded as integral parts of any well-planned community, and that participation in redevelopment programs by religious institutions is not extraordinary.

Implicit recognition of this fact has been accorded by the United States Supreme Court. In Berman v. Parker (348 U. S. 26 [1954]) the court
612 had before it a slum clearance project in the City of Washington undertaken pursuant to the District of Columbia Redevelopment Act of 1945 (60 Stat., 790). In upholding the Redevelopment Act, the court said (348 U. S., at pp. 34-35): "* * * The entire area needed redesigning so that a balanced, integrated plan could be developed for the region, including not only new homes, but also *schools, churches*, parks, streets, and shopping centers. In this way it was hoped that the cycle of decay of the area could be controlled and the birth of future slums prevented. * * * *Such diversifi-*

cation in future use is plainly relevant to the maintenance of the desired housing standards and therefore within congressional power" (emphasis supplied).

The intendment of such statutes is to throw an arm of protection around a whole community and to uplift it, not to ward off some units of the community because of accidental factors such as creed.

And assuredly, the integration of Fordham in such a vast development as Lincoln Square is not a step towards the establishment of a national religion, offensive to the First Amendment of the 614
Federal Constitution. Public welfare legislation, such as the slum clearance law before us and the acts taken thereunder, which extend the general benefit of New York State law "to all its citizens without regard to their religious belief" are not to be considered as establishments of religion (Everson v. Board of Education, 330 U. S., 1, 16 [1947]). Nor have our courts ever temporized with rejecting arguments that state action was aiding in the establishment of religion where concurrence would result in the encroachment upon the free exercise of religion. 615
See, for example, People ex rel. New York League for Separation of Church and State v. Hayes (173 Misc., 821; Sup. Ct., Albany County, 1940), where the construction, with private funds, of churches in state prisons was sought to be enjoined. The court found that the "permission to build by the state is in keeping with the freedom of worship as expressed in the Constitution," referring to article 1, section 3, of the State Constitution (173 Misc., at p. 824). So, in the case at bar, we have, *not* acts which aid in the establishment of a religion, but acts whose

purpose is to prevent the restriction of freedom to worship (see also, Lewis v. Board of Education of City of New York, 157 Misc., 520 [Sup. Ct., N. Y. County, 1935]; mod. on other grounds, 247 App. Div., 106 [1st Dept., 1936]; People ex rel. Lewis v. Graves, 245 N. Y., 195 [1927]; Matter of Lewis v. Mandeville, 201 Misc., 120 [Supreme Court, Westchester County, 1951).

It has been well said that the coin of the First Amendment has two sides. Whenever it is contended that a certain state act is in aid of the es-
617 tablishment of religion, the obverse side of the coin must perforce be examined, lest, in the striking down of the proposed act, the right to freedom of religion be destroyed. As the Court of Appeals said in Matter of Zorach v. Clauson (303 N. Y., 161, 172 [1951], aff'd 343 U. S., 306 [1952]): "* * * it must * * * be remembered that the First Amendment not only forbids laws 'respecting an establishment of religion' but also laws 'prohibiting the free exercise thereof.' We *must not destroy one in an effort to preserve the other*" (emphasis supplied). It would unduly lengthen this opinion to
618 quote extensively from Judge Froessel's well-considered opinion in the Zorach case. Therein, however, he points out that the "wall of separation" between church and state "is designed as a reasonable line of demarcation between friends" and not an "'iron curtain' as between foes," and that instances abound which prove that not "every friendly gesture between church and State shall be discountenanced" (303 N. Y., at pp. 171-172).

In the instant case, it may well be that if Fordham does evolve as the successful purchaser of the collegiate site, such a transaction may prove to be

a "good deal" for Fordham. But this fortuitous factor does not debar it. If the public good is enhanced it is only secondary that private interests may be benefited (Murray v. LaGuardia, 291 N. Y., 320, 52 N. E., 884; Loebner v. City of N. Y., 162 N. Y. S. 2d, 233).

The foregoing considerations and precedents impel the conclusion that the Lincoln Square Slum Clearance Plan cannot arbitrarily exclude a denominational school from the area to be replanned (Matter of Community Synagogue v. Bates, 1 N. Y., 2d, 445, 458 [1956]). And further, no aid at 620
all in the establishment of religion is here envisaged. The plan simply imports that Fordham and the City have achieved an accommodation of purposes resulting in a contract, to be consummated by a purchase at a public auction, and having as its end and aim the resuscitation of a blighted area and its rededication to a better and a more abundant community life.

The defendants' motion for summary judgment is granted and the complaint is dismissed.

Settle order.

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Waiver of Certification

Pursuant to Section 170 of the Civil Practice Act, it is hereby stipulated that the foregoing consists of true and correct copies of the notice of appeal, the order and judgment appealed from, and all the papers upon which the Court below acted in making said order and judgment appealed from, and the whole thereof, now on file in the office of the Clerk of the County of New York; and certification thereof by said Clerk, pursuant to Section 616 of the Civil Practice Act, is hereby
623 waived.

Dated: New York, January , 1958.

HARRIS L. PRESENT,
Attorney for Plaintiffs-Appellants.

PETER CAMPBELL BROWN,
Corporation Counsel,
Attorney for Defendants-Respondents.

SAXE, BACON & O'SHEA,
624 Attorneys for Defendant-Intervenor-Respondent Fordham University.

MILBANK, TWEED, HOPE & HADLEY,
Attorneys for Defendant-Intervenor-Respondent Lincoln Center for the Performing Arts, Inc.

ROSENMAN, GOLDMARK, COLIN & KAYE,
Attorneys for Defendant-Intervenor-Respondent Webb & Knapp Lincoln Square Corporation.

ADDITIONAL PAPERS
TO THE
COURT OF APPEALS

Notice of Appeal to the Court of Appeals

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

64TH ST. RESIDENCES, INC. and 89 AMSTERDAM AVENUE CORPORATION, suing under Section 51, General Municipal Law, and ROSE K. HARRIS, EDYTHE R. SHERRICK, and RENEE BOURET, suing on behalf of themselves and all others similarly situated, and UNITED BALL BEARING CO., INC. and SEYMOUR DAMBROT and PHIL DERMAN, as co-partners doing business in the name and style of DAMBROT & DERMAN, suing on behalf of themselves and all others similarly situated,

Plaintiffs-Appellants,

against

CITY OF NEW YORK; ROBERT F. WAGNER as Mayor of the City of New York and a member of the Board of Estimate; LAWRENCE E. GEROSA as Comptroller of the City of New York and a member of the Board of Estimate; ABE STARK as President of the City Council of the City of New York and a member of the Board of Estimate; HULAN E. JACK as President of the Borough of Manhattan, City of New York and a member of the Board of Estimate; JAMES J. LYONS as President of the Borough of Bronx, City of New York, and a member of the Board of Estimate; JOHN CASHMORE as President of the Borough of Brooklyn, City of New York, and a member of the Board of Estimate; JAMES A. LUNDY, as President of the Borough of Queens, City of New York, and a member of the Board of Estimate; ALBERT V. MANISCALCO as President of the Borough of Richmond, City of New York, and a member of the Board of Estimate; ROBERT MOSES as Chairman of the Committee on Slum Clearance of the City of New York,

Defendants-Respondents,

FORDHAM UNIVERSITY, LINCOLN CENTER FOR THE PERFORMING ARTS, INC. and WEBB & KNAPP LINCOLN SQUARE CORP.,

Defendants-Intervenors-Respondents.

628 *Notice of Appeal to the Court of Appeals*

Sirs:

PLEASE TAKE NOTICE that the above named plaintiffs hereby appeal to the Court of Appeals from the order of the Appellate Division of the Supreme Court for the First Department, dated February 20, 1958, and filed and entered in the Office of the Clerk of said Appellate Division on the same day, which affirmed, without opinion, the Order of Special Term Part III, of the Supreme Court, New York County, and the judgment en-
629 tered thereon which were respectively entered in the Office of the Clerk of the County of New York on the 30th day of December, and the 2nd day of January, 1958; and the said plaintiffs hereby appeal from each and every part of said Order as well as from the whole thereof.

Dated: New York, New York,

February 21, 1958.

Yours, etc.,

630 HARRIS L. PRESENT, Esq.,
Attorney for Plaintiffs-Appellants,
Office & P. O. Address,
375 Park Avenue,
New York, New York.

To:

PETER CAMPBELL BROWN, Esq.,
Corporation Counsel,
Attorney for Defendants-Respondents,
City of New York, et al.,
Municipal Building,
New York 7, New York.

Notice of Appeal to the Court of Appeals 631

ROSENMAN, GOLDMARK, COLIN & KAYE, Esqs.,
Attorneys for Defendant-Intervenor-Respondent, Webb & Knapp Lincoln Square Corporation,
575 Madison Avenue,
New York, New York.

SAXE, BACON & O'SHEA, Esqs.,
Attorneys for Defendant-Intervenor-Respondent, Fordham University,
20 Exchange Place,
New York 5, New York. 632

MILBANK, TWEED, HOPE & HADLEY, Esqs.,
Attorneys for Defendant-Intervenor-Respondent, Lincoln Center for the Performing Arts, Inc.,
15 Broad Street,
New York 5, New York.

HON. JAMES MCGURRIN,
County Clerk, New York County.

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Order of Affirmance

At a term of the Appellate Division of the Supreme held in and for the First Judicial Department in the County of New York, on the 20th day of February, 1958.

Present:

HON. BERNARD BOTEIN,
Presiding Justice.
" CHARLES D. BREITEL,
635 " BENJAMIN J. RABIN,
" MARTIN M. FRANK,
" JAMES B. M. MCNALLY,
Justices.

64TH ST. RESIDENCES, INC. and 89 AMSTERDAM AVENUE CORPORATION, suing under Section 51, General Municipal Law, and ROSE W. HARRIS, EDYTHE R. SHERRICK, and RENEE BOURET, suing on behalf of themselves and all others similarly situated, and UNITED BALL BEARING CO., INC. and SEYMOUR DAMBROT and PHILIP DERMAN, as
636 co-partners doing business in the name and style of DAMBROT & DERMAN, suing on behalf of themselves and all others similarly situated,
Plaintiffs-Appellants,

vs.

CITY OF NEW YORK; ROBERT F. WAGNER as Mayor of the City of New York and a member of the Board of Estimate; LAWRENCE E. GEROSA as Comptroller of the City of New York and a member of the Board of Estimate; ABE STARK as President of the City Council of the City of New York and a member of the Board of Estimate; HULAN E. JACK as President of the Borough of Manhattan, City of New York and a

Order of Affirmance 637

member of the Board of Estimate; JAMES J. LYONS as President of the Borough of Bronx, City of New York, and a member of the Board of Estimate; JOHN CASHMORE as President of the Borough of Brooklyn, City of New York, and a member of the Board of Estimate; JAMES A. LUNDY, as President of the Borough of Queens, City of New York, and a member of the Board of Estimate; ALBERT V. MANISCALCO as President of the Borough of Richmond, City of New York, and a member of the Board of Estimate; ROBERT MOSES as Chairman of the Committee on Slum Clearance of the City of 638
New York.

Defendants Respondents,

FORDHAM UNIVERSITY, LINCOLN CENTER FOR THE PERFORMING ARTS, INC. and WEBB & KNAPP LINCOLN SQUARE CORPORATION,

Defendants-Intervenors-Respondents.

An appeal having been taken to this Court by the plaintiffs-appellants from an order of the Supreme Court, New York County, entered on the 30th day of December, 1957, granting the defendants' motion for summary judgment, denying 639
plaintiffs' motion for a temporary injunction pendente lite and denying plaintiffs' motion for summary judgment for declaratory relief; and from the judgment of said Court entered thereon, dated January 2, 1958, dismissing the complaint.

And said appeal having been argued by Mr. Harris L. Present of counsel for the appellants, and by Mr. Anthony Curreri of counsel for The City of New York, et al., defendants-respondents; by Mr. Porter R. Chandler and Mr. Edward D. Burns of counsel for the Intervenor-Defendant

640 *Order of Affirmance*

Respondent, Fordham University; by Mr. William Eldred Jackson, of counsel for the Intervenor-Defendant-Respondent, Lincoln Center for the Performing Arts, Inc.; by Mr. Samuel I. Rosenman of counsel for the Intervenor-Defendant-Respondent, Webb & Knapp Lincoln Square Corporation; and a brief amicus curiae having been filed by West Side Chamber of Commerce of the City of New York, Inc., by Mr. Sandford Schmaus, of counsel; and a brief amicus curiae having been filed by Lincoln Guild Housing Cor-
641 poration, by Mr. Eugene J. Morris, of counsel; and due deliberation having been had thereon,

It is hereby unanimously ordered and adjudged that the order and judgment so appealed from be and the same hereby are affirmed with costs and disbursements to the respondents, and the intervenors-respondents.

Enter,

VINCENT A. MASSI,
Clerk.

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Judgment of Affirmance 643

SUPREME COURT

New York County

64th St Residences, Inc. and 89 Amsterdam Avenue Corporation, suing under Section 51, General Municipal Law, and Rose K. Harris, Edythe R. Sherrick, and Renee Bouret, suing on behalf of themselves and all others similarly situated, and United Ball Bearing Co., Inc. and Seymour Dambrot and Philip Derman, as co-partners doing business in the name and style of Dambrot & Derman, suing on behalf of themselves and all others similarly situated, 644

Plaintiffs-Appellants,

vs.

City of New York; Robert F. Wagner as Mayor of the City of New York and a member of the Board of Estimate; Lawrence E. Gerosa as Comptroller of the City of New York and a member of the Board of Estimate; Abe Stark as President of the City Council of the City of New York and a member of the Board of Estimate; Hulan E. Jack as President of the Borough of Manhattan, City of New York, and a member of the Board of Estimate; James J. Lyons as President of the Borough of Bronx, 645 City of New York, and a member of the Board of Estimate; John Cashmore as President of the Borough of Brooklyn, City of New York, and a member of the Board of Estimate; James A. Lundy as President of the Borough of Queens, City of New York, and a member of the Board of Estimate; Albert V. Maniscalco, as President of the Borough of Richmond, City of New York, and a member of the Board of Estimate; Robert Moses as Chairman of the Committee on Slum Clearance of the City of New York.

Defendants-Respondents,

Fordham University, Lincoln Center for the Performing Arts, Inc., and Webb & Knapp Lincoln Square Corporation,

Defendants-Intervenors-Respondents.

646 *Judgment of Affirmance*

The plaintiffs-appellants having appealed to the Appellate Division of the Supreme Court, First Department, from an order of the Supreme Court, New York County, entered on the 30th day of December, 1957, granting the defendants' motion for summary judgment, denying plaintiffs' motion for a temporary injunction *pendente lite* and denying plaintiffs' motion for summary judgment or declaratory relief; and from the judgment of said Court entered thereon, dated January 2, 1958, dismissing the complaint and the
647 appeal having been duly argued in the Appellate Division and that Court in an order entered in the office of the Clerk of said Appellate Division on the 20th day of February, 1958, having unanimously ordered and adjudged that the order and judgment so appealed from be affirmed with costs and disbursements to the respondents and the intervenors-respondents (and a certified copy of said Appellate Division order having been duly filed in the office of the Clerk of the County of New York on or about the 21st day of February, 1958) and the costs of the defendants-respondents
648 having been duly taxed at the sum of $125.04 and the costs of the defendant-intervenor-respondent, Fordham University, having been duly taxed at the sum of $174.44 and the costs of the defendant-intervenor-respondent, Lincoln Center for the Performing Arts, Inc., having been duly taxed at the sum of $52.70 and the costs of the defendant-intervenor-respondent, Webb & Knapp Lincoln Square Corporation, having been duly taxed at the sum of $26.85.

Now, on motion of Peter Campbell Brown, Corporation Counsel, attorney for defendants-re-

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spondents; Saxe, Bacon and O'Shea, Esqs., attorneys for defendant-intervenor-respondent, Fordham University; and Milbank, Tweed, Hope and Hadley, Esqs., attorneys for defendant-intervenor-respondent, Lincoln Center for the Performing Arts, Inc., and Rosenman, Goldmark, Colin & Kaye, Esqs., attorneys for defendant-intervenor-respondent, Webb & Knapp Lincoln Square Corporation, it is

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ADJUDGED that the judgment so appealed from be and the same hereby is unanimously affirmed, and it is further

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ADJUDGED that the defendants-respondents, City of New York; Robert F. Wagner as Mayor of the City of New York; Lawrence E. Gerosa as Comptroller of the City of New York; Abe Stark as President of the City Council of the City of New York; Hulan E. Jack as President of the Borough of Manhattan, City of New York; James J. Lyons as President of the Borough of Bronx, City of New York; John Cashmore as President of the Borough of Brooklyn, City of New York; James A. Lundy as President of the Borough of Queens, City of New York; Albert V. Maniscalco as President of the Borough of Richmond, City of New York; Robert Moses as Chairman of the Committee on Slum Clearance of the City of New York (Municipal Building, New York City), recover of the plaintiffs-appellants, 64th St. Residences, Inc. (146 West 64th Street, N. Y. C.), 89 Amsterdam Avenue Corporation (89 Amsterdam Avenue, N. Y. C.), Rose K. Harris, Edythe R. Sherrick and Renee Bouret (101 West 66th Street,

652 *Judgment of Affirmance*

N. Y. C.), United Ball Bearing Co. Inc. (49 Amsterdam Avenue, N. Y. C.), Seymour Dambrot and Philip Derman, as co-partners doing business in the name and style of Dambrot & Derman (40 Columbus Avenue, N. Y. C.), the sum of $125.04 costs as taxed and that said defendants-respondents have execution therefor, and it is further

653 ADJUDGED that the defendant-intervenor-respondent, Fordham University (Fordham Road, Bronx, N .Y. C.), recover of the plaintiffs-appellants, 64th St. Residences, Inc. (146 West 64th Street, N. Y. C.), 89 Amsterdam Avenue Corporation (89 Amsterdam Avenue, N. Y. C.), Rose K. Harris, Edythe R. Sherrick and Renee Bouret (101 West 60th Street, N. Y. C.), United Ball Bearing Co. Inc. (49 Amsterdam Avenue, N. Y. C.), Seymour Dambrot and Philip Derman, as co-partners doing business in the name and style of Dambrot & Derman (40 Columbus Avenue, N. Y. C.), the sum of $174.44 costs as taxed and that said defendant-intervenor-respondent have execution therefor, and it is further

654 ADJUDGED that the defendant-intervenor-respondent, Lincoln Center for the Performing Arts, Inc. (10 Columbus Circle, N. Y. C.), recover of the plaintiffs-appellants, 64th St. Residences, Inc. (146 West 64th Street, N. Y. C.), 89 Amsterdam Avenue Corporation (89 Amsterdam Avenue, N. Y. C.), Rose K. Harris, Edythe R. Sherrick and Renee Bouret (101 West 60th Street, N. Y. C.), United Ball Bearing Co. Inc. (49 Amsterdam Avenue, N. Y. C.), Seymour Dambrot and Philip Derman, as co-partners doing business in the name and style of Dambrot & Derman (40

Judgment of Affirmance 655

Columbus Avenue, N. Y. C.), the sum of $52.70 costs as taxed and that said defendant-intervenor-respondent have execution therefor, and it is further

ADJUDGED that the defendant-intervenor-respondent, Webb & Knapp Lincoln Square Corporation (575 Madison Avenue, N. Y. C.) recover of the plaintiffs-appellants, 64th St. Residences, Inc. (146 West 64th Street, N. Y. C.), 89 Amsterdam Avenue Corporation (89 Amsterdam Avenue, N. Y. C.), Rose K. Harris, Edythe R. Sherrick and Renee Bouret (101 West 60th Street, N. Y. C.), United Ball Bearing Co. Inc. (49 Amsterdam Avenue, N. Y. C.), Seymour Dambrot and Philip Derman, as co-partners doing business in the name and style of Dambrot & Derman (40 Columbus Avenue, N. Y. C.), the sum of $26.85 costs as taxed and that said defendant-intervenor-respondent have execution therefor. 656

Dated: February 21, 1958.

JAMES MCGARRIN, 657
Clerk.

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Stipulation Waiving Certification of Record to Court of Appeals

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that the foregoing are true and correct copies of the Record on Appeal to the Appellate Division, First Department; the Order of Affirmance; the Judgment of Affirmance and the Notice of Appeal to the Court of Appeals, all of which are on file in the office of the Clerk of the County of New York.

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Certification of all of the foregoing papers is hereby waived.

Dated: New York, March , 1958.

HARRIS L. PRESENT,
Attorney for Plaintiffs-Appellants.

PETER CAMPBELL BROWN,
Corporation Counsel,
Attorney for Defendants-Respondents,
City of New York, et al.

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SAXE, BACON & O'SHEA,
Attorneys for Defendant-Intervenor-Respondent, Fordham University.

MILBANK, TWEED, HOPE & HADLEY,
Attorneys for Defendant-Intervenor-Respondent, Lincoln Center for the Performing Arts, Inc.

ROSENMAN, GOLDMARK, COLIN & KAYE,
Attorneys for Defendant-Intervenor-Respondent, Webb & Knapp Lincoln Square Corporation.